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BUILDING DEMOCRACY WITH EXTERNAL HELP: MACEDONIA AND SERBIA

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Index

List of Abbreviations and Acronyms:

ANA Albanian Liberation Army.

AP Autonomous Province.

BIA Security Intelligence Agency (Serbia).

BTI Bertelsmann Transformation Index.

CAG Citizen Advisory Group (Macedonia).

CC Constitutional Court.

CEEC Central-Eastern European Countries.

CEFTA Central Europe Free Trade Agreement.

CEI Central European Initiative.

CESID Center For Free Elections and Democracy (Serbia).

ChA Change Agent.

CoE Council of Europe.

CPT European Committee for Prevention of Torture.

CPT European Committee for Prevention of Torture CPT.

DB State Security (Serbia).

DOS Democratic Opposition of Serbia.

DPA Democratic Party of Albanians (Macedonia).

DroL Democratic Rule of Law.

DS Democratic Party (Serbia).

DSS Democratic Party of Serbia.

DU Democratic Union for Integration (political party of ethnic Albanians in Macedonia).

EBRD European Bank for Reconstruction and Development.

EEC European Economic Community.

EU European Union.

EUCLIDA European Union Cycles and Layers of International Democratic Anchoring.

EULEX European Union Rule of Law Mission in Kosovo.

FA Framework Agreement (Ohrid Framework Agreement).

FDI Foreign Direct Investments.

FRY Federal Republic of Yugoslavia.

FYROM Former Yugoslav Republic of Macedonia.

HCSC High Civil Servants Council.

HJC High Judicial Council.

HRMC Human Resources Management Center.

IA International Actor.

IAC Institutional and Administrative Capacity.

ICJ International Court of Justice.

ICTY International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

IMF International Monetary Fund.

IO International Organization.

IREX International Research & Exchanges Board.

JNA Yugoslav People's Army.

JSO Unit for Special Operations.

KFOR Kosovo Force.

LDP Liberal Democratic Party (Serbia).

MDU Media Development Unit (of the OSCE office in Skopje).

MEC Municipal Electoral Commissions (Macedonia).

MiA Macedonian Intelligence Agency.

MIP Multy-annual Initiative Program of the European Union.

MJA Macedonian Judges Association.

MoD Ministry of Defense.

MoI Ministry of Interior.

MP Member of the Parliament.

MRTV Radio-Television of Macedonia.

MS Member State.

NATO North Atlantic Treaty Organization.

NDI National Democratic Institute.

NGO Non-governmental Organization.

NLA National Liberation Army.

NPM New Public Management.

OECD Organization for Economic Cooperation and Development.

OFA Ohrid Framework Agreement.

OSCE Organization for Security and Co-operation in Europe.

PDP Party for Democratic Prosperity (political party of ethnic Albanians in Macedonia).

PM Prime Minister.

RIK Republican Electoral Commission (Serbia).

RJC Republican Judicial Council (Macedonia).

RTS Radio-Television of Serbia.

SAA Stabilization and Association Agreement.

SAP Stabilization and Association Process.

SCG Serbia and Montenegro.

SDP Social-Demokratska Partija (Serbia).

SDSM Social Democratic Union of Macedonia.

SEC State Electoral Commission (Macedonia).

SFRY Socialistic Federative Republic of Yugoslavia.

SNP Socialistic People Party of Montenegro.

SPS Socialistic Party of Serbia.

SRS Serbian Radical Party.

UCK Acronym in Albanian for the Kosovo Liberation Army.

UNHCR United Nations High Commissioner for Refugees.

UNMiK United Nations Mission in Kosovo.

UNPREDEPUnited Nations Preventive Deployment Force.

UNSC United Nations Security Council.

USAID United States Agency for International Development.

UTD Unit of Territorial Defense (in the republics of the SFRY).

VJ Army of Yugoslavia.

VMRO Internal Macedonian Revolutionary Organization (political party in Macedonia).

WB World Bank.

WTO World Trade Organization.

ZELS Association of the Units of Local Self-Government of the Republic of Macedonia.

INTRODUCTION

Even though the international impact on the domestic political regimes only recently attracted the scholars' attention, the international influence over the nation-states is generally far from being a new phenomenon. Through the centuries, the international and/or regional super powers exercised a strong influence on the domestic struggles for power and even on the changes in the political regimes. In the long history of the states, and particularly in the history of the small and weaker states, we account for numerous cases of foreign influence over the domestic politics, be it through diplomatic and/or military interventions, or through the systemic impact of the international political economy and, more generally, the international environment.

However, while the non-democratic regimes, over the long history of mankind, were relatively easily imposed and maintained through the foreign military action, the external promotion of democracy, due to the particularities of the democratic political regime, represents a far more difficult task. On the one hand, democracy promotion, like any external involvement in domestic politics, is limited by the international environment and by the complicated, often antagonistic relationships between the super-powers of the international system. In a multi-polar international system, any effort of a specific state to influence other states' domestic politics might be perceived as an effort to change the balance of power between the international actors so that the international legitimacy of the external involvement in domestic politics represents a serious problem, which limited the possibilities of the external promotion of democracy for a long time. Further on, being democracy a political regime based on consensus and participation rather than on violence, its external promotion by definition needs a certain level of domestic acceptance and cooperation between external and domestic actors, requiring the development of new strategies based on non-violence and a series of domestic factors that would favour the transition.

The end of the cold war thus created a particularly fertile ground for the democracy promotion in many aspects. The victory that liberalism gained over communism solved the

problem of the international legitimacy of the external intervention. Democracy became the only legitimate political regime, and the promotion of democracy became both acceptable and, due to the "democratic peace paradigm", a desirable course of the foreign policy to follow. Very soon, it turned into the hallmark of many developed countries' foreign (and security) policy. On the other hand, the victory of the liberal paradigm also strongly resonated among the citizens of the non-democratic states who, aspiring to the economic and political prosperity of the "West", started, more or less successfully, to call for the liberalization and democratization at home. Such overall acceptance of liberalism as the only legitimate paradigm created a particularly fertile ground for the democracy promotion. The last wave of democratization that spread through the Eastern Europe represented an unprecedented case of international promotion of democracy by peaceful means, and saw the emergence of EU as one of the world's most important and most successful democracy-promotion actors.

Such situation clearly reflected on the interests of those scholars who, after the tumultuous changes that took place over the last two decades of the XX century, became more and more attracted to understanding the mechanisms of the external influence on the domestic transitions. The call to "reverse the second image", made by Gourevitch already in 1978, was therefore supposed to wait for the fall of the Berlin wall before the scholars started to "cross the bridge between the internationalists and comparativists" and develop the analytical tools for studying what Pridham labeled the "forgotten dimension of democratization". How can the international environment and international actors influence the domestic change of the political regime? Can democracy be promoted, and if yes, how? When trying to influence the domestic politics and to bring to democratization, do the international actors exercise a positive influence, or, as underlined by Snyder (2000), can the democracy promotion sometimes bring more harm than good? Finally, how can we overpass the internationalists-comparativists division and create theories on the external-internal linkage of democratization? These are some of the questions concerning the link between the international and domestic politics to which, since the beginning of the Nineties, both the scholars and the policy makers were more and more interested in finding an answer.

This study is nested in the developing stream of studies concentrated on the influence of the international actors on the democratization process. Its goal is to identify the relevant factors on both the international and domestic level and to analyze how these factors combine to bring to the adoption (or lack thereof) of the promoted democratic norms. In particular, we

will concentrate on the EU democracy promotion in the two Balkan states, Serbia and Macedonia, examining the course of democratization in the two countries and the role played by the EU. The main question of our empirical work will therefore be: how did the democratization in the two countries develop? What is the level of democratization achieved? Did the EU influence the domestic changes and, if yes, how did it contribute to the registered outcomes?

In order to give an answer to our questions, in the first chapter of the theoretical part we will examine the existing literature in the field, and describe one of the most recent and most developed analytical frameworks that unpack the black box of the interactions between international and domestic factors: Morlino and Magen's analytical framework EUCLIDA (European Union Cycles and Layers of International Democratic Anchoring). In the second chapter we will further develop the EUCLIDA framework, including, on the supply side, three groups of factors concerning the international level: the interests, capacities and approach of the international actor engaged in the democracy promotion. We will explain how these three groups of factors combine with the original EUCLIDA framework and explore the impact that the feedback of the anchoring produces on our independent variables, to conclude the chapter with the hypothesis deriving from our analytical model. In the third chapter we will face some fundamental questions concerning the research: we will explain the choice of the cases, the choice of the dimensions of the democratic rule of law that we will study, the choice to concentrate on the EU as the most successful and active democracy-promoting international actor. We will also explain the choice to use the comparative method and the combination of the inductive and theory-testing process tracing techniques, describe the data sources that will be used and organize the structure of the empirical chapters.

In the second part we will proceed with the empirical analysis, following the process of democratization in the two countries along the thirteen dimensions of the democratic rule of law, analysing the EU promotion of the norms and assessing the factors that brought to particular outcomes. We dedicated the first thirteen chapters of the empirical part to the dimensions of the democratic rule of law we identified as relevant. As the revised EUCLIDA analytical framework includes, among other factors, the impact of the developments in the process of the boundary removal, in the last three chapters we will explore those issues that, in a preliminary analysis, were identified as the most relevant questions in the relationship

between the EU and the state subject to the anchoring process. Finally, in the conclusive chapter, we will summarize our findings, reflecting on the outcome and on the impact exercised by each of the factors we included in our analytical framework, we will describe the process of anchoring and de-anchoring of the Serbian and Macedonian democracy in the final paragraphs, to conclude our work with reflections on the most important lessons that can be drawn from the study.

Part I

A Theoretical Framework

1. INTERNATIONAL DIMENSION AND EUCLIDA

1.1. Introduction: Causes of Democracy Beyond the Country's Borders

As Kant[1] stressed, some causes of democratization lie beyond the country's borders. This study aims to investigate the external factors of democratization, concentrating on what, as we will see, appears to be an emerging form of international democracy promotion: international anchoring.

The theoretical framework we propose is built on the analytical model EUCLIDA, developed by Morlino and Magen in order to analyze the process of EU democracy promotion through integration[2]. The theoretical goal of this study is to further develop the framework that gives the basis for studying the concept of the international anchoring of democracy as a particular form of international (and not only EU-) influence on the process of the domestic regime change. Before describing the basic EUCLIDA model and developing the analytical framework for a more general study of the international anchoring, let us first summarize the existing findings and approaches, starting from the debate on the importance of the international dimension of democratization

Even though Gourevitch underlined, already in 1978, the need to revise the "second image" and envisaged the deep impact the "international system, international economy as well as ideas and ideologies" have on the domestic political regimes, up to 1990 the democratization was perceived as mainly an internal process with international factors playing only a marginal role. Thus, in their study "Transitions from Authoritarian Rule", O'Donnell and Schmitter (1986) asserted that:

> "One of the firmest conclusions that emerged… was that transitions from authoritarian rule and immediate prospects for political democracy were largely to be explained in terms of national forces and calculations. External actors tended to play an indirect and usually marginal role…" (p. 5).

[1] Kant, 1963.
[2] Morlino and Magen 2004, 2008.

Seen the period of these studies (before the end of the cold war), as well as the regions included (Latin America and Southern Europe), such conclusion was no surprise. While subscribing such conclusion, Whitehead, however, underlined its limitations:

> "The cases chosen for this study (…) shared a variety of defining characteristics. Not only were they post-war peacetime attempts at transition, they all concerned transition from an authoritarian regime of the right; and they nearly all concerned countries whose political traditions included a substantial amount of liberalism and constitutionalism. The generalizations proposed in this chapter may only apply within these restrictions. For example, in all the peacetime cases considered here internal forces were of primary importance in determining the course and outcome of the transition attempt, and the international actors only played a secondary role" (Whitehead 1986, p. 4).

Already in that moment, Whitehead went a step further, by recognizing a certain importance to the international actors even in those cases described by O'Donnell and Schmitter (1986). He underlines the important role of the EC, and describes the mechanism by which the EC supported the democratization in the southern Europe:

> "One perhaps decisively favorable aspect of the incentives for democratization offered by the European Community was the guarantees and reassurances it could provide to those conservative and upper-class groups in Southern European society that were most likely to feel threatened by popular government" (Whitehead, 1986, p. 23).

Only five years later, Pridham will call for the inclusion of "the forgotten dimension"[3], while in the same year, in the panel Whitehead chaired at the International Political Science Association conference in Buenos Aires, two draft papers on the mechanisms of the international influence on democratization will be presented. Two co-authors of the Transitions from the Authoritarian Rule will present the first works in which they directly challenge the conclusions from 1986: Whitehead's own "Three international dimensions of Democratization" and Schmitter's "The influence of the international context upon the Choice of National Institutions and Policies in Neo-Democracies" (both published in "International dimensions of democratizations", Oxford, 1996). The failure of "transitions literature" to account for the international dimension was blamed not only on the spatial limitations of the generalizations, but also on the methodological inclinations characterized by "the focus on coalition-building and on strategic interactions between relatively well-established political forces" (Whitehead, 1996, p. 16).

In order to make justice to the work of O'Donnell and Schmitter, we should also underline the importance that the historical moment had in obstructing the proper understanding of the international factor's role. The studies prior to 1990 considered that international dimensions

[3] See Pridham, 1991.

might matter only in war times. This way, while Whitehead underlined that O'Donnell and Schimtter's finding is limited to the transitions that took place in peacetime and in a relatively stable international system, in the same volume Stepan identified the "paths towards re-democratization", three among which played the important role of external factors: internal instauration after external re-conquest, internal reformulation, externally monitored installation[4]. For Stepan, the international dimension was salient only in those cases where warfare and conquest played an integral part in the democratization process and accounted only for a few cases:

> "For the last three decades, and for the conceivable future, the overwhelming majority of cases of re-democratization have been and will be the ones in which socio-political forces rather than military forces play the key role" (Stepan, 1986, p. 65).

The international dimension of democratization was under-theorized more than unknown, due to the lack of empirical cases in which the international influence over the "peacetime undergoing democratizations" was so determinate to attract the attention of scholars. The "discovery" of the international dimension in literature was destined to wait for the most recent wave of democratization of the eastern European countries, whose internal system appears as a perfect reflection of the international environment and its changes since the Second World War up to today.

As it usually happens, the discovery of the international factor and its importance was the product of the changes that made such factor more visible in the reality. With the growing of democracy promotion as an acceptable foreign policy strategy, the international influence on the domestic regime became more visible. Three are the factors (all strictly linked with the end of the cold war) that made the influence on the domestic regimes a widespread foreign policy strategy.

1. The change in the international system produced by the end of the cold war removed the obstacles that had been undermining the attempts to include democracy as an international norm for years [5]. The democracy promotion is not a "new finding": the USA made efforts of democracy promotion during the era of the cold war, while the EU made its first effort in democracy promotion in the cases of Franco's Spain, Salazar's Portugal and the colonels' Greece[6]. However, we shall underline that, at the time, the concept of democracy had different meanings as we passed from one side of

[4] See Stepan, 1986.
[5] See Rich 2001, Christiansen, Petito e Torna, 2000.
[6] See Whitehead, 1986.

the iron curtain to the other. While both west and east claimed to support the rule of people, the democracy of the *other* was perceived as falsity, and the democracy (or communism) promotion represented a clear act of aggression in an attempt to change the balance of power. The rivalry between the east and west made the democracy promotion a diplomatically sensitive issue, an obstacle that is far less significant since the end of the cold war;

2. The spread of the liberalist idea, together with the growing threat of terrorism, made democracy promotion one of the foreign- and security policy goals for many existing democracies[7]. The idea of the democratic peace surely was not a new idea in the diplomatic circles, as it guided the foreign policy of USA for a long time, and was recently included among the means of the EU security policy[8]. However, it would be wrong to consider democratic peace the only reason guiding the policy makers to conceive democracy promotion as a mean of security policy. The democracy promotion is, by definition, the involvement in the internal affairs of the country, and as such it allows the "promoter" to influence the domestic distribution of powers in order to protect his own economic and security interest. As Whitehead (1996) explains in his study on democratization through imposition, in some cases the external actor might consider it a less costly strategy to invest in democratization than to establish control on the conquered territory. We can imagine that the new elite that gained power due to external support might be favourable to the external partners. While the thesis about the "democratic peace" is not confirmed, we can imagine how the thesis claiming that "in case of successful democracy promotion, the elite that gained power due to the influence of the external actors would not declare war to its external sponsors" might be credible. Moreover, the end of the cold war saw the triumph of the liberal paradigm over communism, not only in terms of the "democratic peace" thesis. The western liberal democracies with their capitalist economies became the only

[7] See Magen, 2004; Morlino and Magen, 2004; Morlino and Magen 2008; Mattina, 2004.

[8] However, Snyder, 2000, shows that such assumption is not fully true and that while there might be a link between peace and democracy, the states undergoing the democratization process are more prone to make war. "While the world would undoubtedly be more peaceful if all states became mature democracies, Clinton's conventional wisdom failed to anticipate the dangers from getting from here to there. (…) The successful unfolding of a global, liberal democratic revolution might eventually undergird a more peaceful era in world politics, but in the meanwhile, the transition to democratic politics is creating fertile conditions for nationalism and ethnic conflict. (…) Thus, the process of democratization can be one of its own worst enemies, and its promise of peace is clouded with the danger of war" (Snyder, 2000, pp. 15, 20, 21).

paradise on earth and the only model of society that can ensure the wealth of its citizens[9], which brings us to our third point:

3. The fall of the Communism made democracy and market economy become the most used resources for the legitimization of the regimes, which meant that, in order to win and/or maintain the power, the former communist regimes were expected to liberalize and to introduce multi-party elections and capitalism. This on the one hand made democracy promotion a far less costly project: being a form of external involvement in the domestic affairs, it is much more favourable if such intervention is perceived as "legitimate". On the other, this brought to a series of transitions that in some cases resulted in the establishment of democracy, in many others in spreading of hybrid regimes on the fuzzy borderline between authoritarianism and democracy[10]. The very nature of the hybrid regimes represents a fertile ground for the process of democracy promotion.

These three factors made democracy promotion both a possible and profitable strategy to follow, with a number of international institutions and national governments engaged in financing the increasing democratic transitions.[11] This change was gradually reflected in the literature on democratic transition and consolidation that, by the mid-'90s, started to pay more attention to the international dimension of democratization.

Even though the study of democratization became more internationalized in the last decade, the literature on the subject is only starting to develop[12]. It has not yet developed core theories or examined cross-national empirical data, exploring the association of international factors with democratic transitions or democratic consolidation[13]. The main cause of this poor understanding of the phenomenon lies in the separate research agendas and lack of communication between comparativists and internationalists[14]. Such lack of inter-disciplinary communication represents a large shortcoming in literature, seen that Whitehead underlined the necessity to face the issue already in 1996. As he stressed,

[9] "Democracy has become everyone's slogan today. Who does not claim that democracy is a good thing, and which politician does not assert that the government of which he is a part practices it and/or the party that he represents wishes to maintain and extend it? It is hard to remember that not so very long ago, in the period from the French Revolution up to 1848 at least, democracy was a word used only by dangerous radicals. " (Wallerstein, 2001).

[10] See Diamond 2002.

[11] For a discussion on the influence of the fall of USSR on the EU foreign policy and democracy promotion, see Mattina, 2004, pp. 13 – 15.

[12] See Pevehouse 2002, p. 516; Morlino and Magen, 2008.

[13] Pevehouse, 2002, p. 516; Magen 2004, Morlino and Magen, 2008.

[14] Morlino and Magen, 2008.

> "… Whether the appropriate perspective for studying a given issue is contagion, control, or consent, it may be artificial to dichotomize the analysis into domestic and international elements… In the contemporary world there is no such thing as democratization in one country, and perhaps there never was. " (Whitehead, 1996, p. 24).

What we need is to open the black box of the state and try to understand the linkages between international agents and domestic actors[15]. In order to fully understand the importance of *unpacking* the black box of the state, we should turn to the third reason to focus on external actors when studying the process of democratization: the nature of the hybrid regimes, the prevalent type of regime since the last decade of the 20th century. More than half the existing regimes belong to a gray zone between closed authoritarian regimes and liberal democracies. The variety of these regimes is enormous, the proliferation of different terms due to the difficulties of capturing their fluid reality being the main illustration of such variety. The features of these regimes differ, and with them also the *grade* of democratization (or better, the distance and the possibility of becoming a consolidated democracy). The most interesting case is represented by the electoral democracies that, even though they do not fully protect civil liberties, are characterized by relatively fair electoral procedures and ambiguous regimes floating between electoral democracies and competitive authoritarian regimes[16]. In these cases, beside the possibility of exercising external political or economic pressure in order to promote democracy, the existence of the political pluralism gives the external actors the possibility to play something similar to Putnam's *two level game*[17]. It can try to change the cost and benefits calculation of the actors and their respective powers, or it can contribute to *unmask* the undemocratic aspects of the incumbent elite. The case of Maciar's Slovakia serves as an example for how the international actor's intervention can be crucial for bringing the regime sliding to authoritarianism back onto the democratic path[18].

The presence of the international actors can influence the result of the electoral competition or contribute to maintain the "democratic forces" in power. This influence may be necessary in order to maintain the fragile democratic regimes by keeping the ancient regime forces away, but, at the same time, it might also undermine the goal of the party system competitiveness and seriously damage the horizontal accountability[19]. As Whitehead underlined when speaking about democratization by "imposition", if the democracy is to

[15] On a discussion about the relation between the domestic and international level variables in explaining the process of democratization, see Mattina, 2004.
[16] For a definition of electoral democracy and ambiguous regime, see Diamond, 2002, pp 25 – 26.
[17] See Putnam 1988.
[18] On the EU influence on Slovakian democratization, see Vachudova, 2001.
[19] Morlino 2006.

become fully consolidated, the external protection and support to the domestic protagonists of transition shall be brought to end, and the opposition shall be accepted (Whitehead 1996). This argument, developed in relation to the democratization through imposition, can *also* be applied to all those cases where the international actor produces serious effects on the political competitiveness. The goal and effects of these actions can differ, and surely, their intensity is not comparable with the cases where force is used, but they shall be taken in consideration due to the impact they *might* have on the quality of the established democracy.

Last, but not least, we shall remember that beside being a "moral obligation" for some international actors, when we go beyond rhetorics, the democracy promotion is a powerful instrument of the foreign and security policy[20]. Even the EU, which in its first treaties underlined the devotion to the "conservation of the democratic regimes", includes democracy promotion as a mean of its security policy. Being not only a goal, but often conceived as an instrument of foreign and security policy, it is important to understand the order of preferences of the international actors engaged in the process of democracy promotion. Whenever promoting the democratic norms is in line with, or at least neutral for, the international actor's other interests, it will be the strategy to follow. Nevertheless, the entire process might be undermined and the influence of the external actor might even go towards the undermining of the democratic practices in those cases when his national interests are threatened by the implementation of some particular democratic norm.

Besides, in those cases where democracy promotion is guided by values *other* than democracy itself, the IA's interests in the target country produce an establishment of the bi-directional relationship of power. In those cases when the target state elite is aware of the security, economic, political concerns that lie behind the international actor's democracy promotion actions, it might try to use this knowledge in order to put the international actor under pressure and contribute to the change of the IA's preferences. The existence of such interests might not only make the external actor undertake measures that obstruct democratization, but it might also be used by the authoritarian elite to obstruct the democracy promotion process.

[20] For enlargement and democracy promotion as a particular EU foreign policy, see Mattina, 2004.

1.2. Mechanisms of International Influence on Democratization

Like we already stressed in the first paragraph of this chapter, until the mid-'90s the studies on the democratic transition and consolidation gave little importance to factors other than the domestic ones. Only with Geoffrey Pridham the scholars started to explore the influence of the international actors and structure on what used to be conceived as a mainly domestically driven change. In the recent years, literature identified different mechanisms through which international factors may influence the democratization. These, to list only some, would include: diffusion, contagion, *zeitgeist,* gravity, complex interdependence, convergence, emulation, socialization, learning, conditionality[21]. Many of these concepts were developed by the scholars of the europeanization, where the EU's capacities to promote democracy were examined. Some of the studied mechanisms were then "EU-size modeled", while the other are more generalized and concern the democracy promotion mechanisms independently on who the involved actors are. Moreover, seen the tendency to study the democracy promotion, and seen the contemporary prevalence of the liberal democratic values as the basis for the legitimization of political regimes and promotion strategies, it appears that we forgot that democracy is not unique, but of many kinds, and, even more important, that it is not the only possible political regime. If we are to cast *some* light on the issue, first we should pay attention to the fact that the EU democracy promotion is actually the promotion of a specific political regime by a specific actor. If we go back to the period of the cold war, we can easily observe how there is a possibility that an idea other than liberalist, and a political regime other than liberal democracies, can equally be promoted by the international actors. In this light, we believe it necessary to keep, as much as possible, the objects of our study separated from the concepts we develop for the analysis. Obviously, at the lowest level of abstraction we might be forced to define some concepts so bound into their goal that they appear to apply to only one existing actor (as it was the case with Whitehead's concept of democracy by contagion). However, until this becomes necessary, we should keep in mind that the mechanisms that are described as "methods of democracy promotion" often are the "instruments for the promotion of a political regime", and, if we go up the scale of abstraction, are based on the methods of exercising influence/power. This said, we will try here to represent some main

[21] Gruegel 1999; Huntington 1991; Kubicek 2003; Linz and Stepan 1996; Pridham 1991, sited in Baracani 2006.

models considered in literature, underlining however that an accurate classification of the terminology would require a much deeper analysis than this work is aiming to.

First of all, we shall distinguish between "spread of democracy" and "promotion of democracy", a distinction based on the role of the external actors (active or passive). Some of the models developed in literature assumed that "democracy is contagious", that it can diffuse (by itself), that the specific timing or "democratic neighborhood" might serve as an example and influence the internal events. Whitehead's (1996) and later Schmitter's (1996) concept of contagion, Linz and Stepan's (1996) concepts of "zeitgeist" and "diffusion effects", all imply passive international actors without intention or interest for democracy promotion.

In the "diffusion studies", different models were developed, some of them even including the situation of the active democracy promotion as a kind of "diffusion". For example, some authors identify coercion, competition[22], rational learning, cognitive heuristics, external pressure and quest for legitimacy[23] as different "manners" in which democracy can spread. In some other studies, diffusion is defined in a manner to embrace both persuasion and contagion, both imitation of the neighbor state and the pressures of the International Organization[24]. Finally, in the work of Starr where the diffusion was defined as strictly geo-political, time and space variable, the model remains insensitive to the cases where the outcome was a product of strong regional actors making pressures on the countries situated in their zones of interest, therefore being "responsible" for what appears to be the "diffusion effect".[25]

Some authors, however, underlined that the important and distinctive feature of the democratic "contagion" can be identified in the "source of the incentive for contagion": the democratization is not influenced by external pressures, but it refers to the situation when the domestic elite *seeks* the rule adoption. It is mainly a domestically driven process, where the "example" to imitate is only a "source of solution" for a problem. Schimmelfennig and Sedelmeier (2005) use similar criteria (labeled by the authors as the "main actor in the rule adoption process") to distinguish between the alternative mechanisms of europeanization, underlining that the "most useful distinction (between different mechanisms of europeanization, author's note) is the extent to which the rule adoption is EU- or domestically driven. In simple terms, we consider rule adoption as EU driven in those cases in which a

[22] Simmons, Dobbin, Garrett 2006, 2007.
[23] Weyland, 2005.
[24] Brinks and Copendge, 2006.
[25] Starr, 1991.

state would not have adopted these rules had it not been for a particular action from the EU" (Schimmelfennig and Sedelmeier, 2005, pp. 8-9). Weyland (2005) expressed it by underlining the "need" for rule adoption. In the case of the externally promoted norms (by pressures or, in the cases of the "quest for legitimacy", by the normative pressures) there is no *internal* necessity for the rule adoption which takes place only due to the external incentives. In the case of the contagion (here Weyland distinguishes two mechanisms on the bases of the type of the actor's rationality: rational learning and cognitive heuristics), the impulse to adopt the norm comes from *inside* and is primarily driven by the search for solution[26]. In Kingdon's terms (1984), the distinction lies in "which stream contributes to opening the window of opportunity": in the case of contagion it is the stream of problems to search for solutions, while in the case of external pressure, or quest for legitimacy, it is the solution which searches for problems.

As represented in literature, there appears to be a partial overlapping between those concepts known as "socialization mechanisms" and the concepts linked with contagion, both being the cases where no explicit external pressures can be traced. We can distinguish between the two by arguing that, in the process of contagion, the external actor is not exercising power and the domestic actors are not influenced by external pressures.

This apparently easily understandable criterion of distinction becomes much fuzzier if we consider what Vachudova (2001) labeled as "passive EU leverage", and it deserves further consideration. Vachudova's concept of "passive EU leverage" refers to the non-action of the EU in the period immediately after the fall of communism. Even though EU was not engaged in actions of democracy promotion, the existence of the community and the East European desire to gain membership status brought to the introduction of the democratic norms. It was only the attraction for the EU membership, and not the incentives and impulses coming from the EU to influence the internal politics. In this case, obviously, the international actor is passive. However, it appears difficult to compare this concept with the concepts conceiving the international environment as a "stream of Kingdon's policy solutions", as it is clear that it was not the existence of the EU, but the prospect for membership, even though EU was an inactive component, to bring to democratization. The same problem appears in Levitsky and Way's (2005) more general term "western leverage", or at least in some existing interpretations of the term. The authors include the diffusion as one of the forms of "external democratizing

[26] Later on, we will underline that what Wayland considered "research for solution" should be formulated differently.

pressures", but when considering the ways of exercising leverage, they list "political conditionality and punitive sanctions, diplomatic pressure and military intervention", all forms implying active international actors.

The difficulty appears very similar to the debate existing in the political science over the intentionality of causation and power. Should the concept of power include those cases where A unintentionally causes the behaviour of B? The scholars are divided between those, claiming that the notion of power shall include only *intentional* causation (thesis supported by Weber, 1922 and Russell, 1938), and those, like Dahl (1969) or Oppeinheim (1961), who claim that power can be exercised even by the passive actor. Dahl (1967) adopts the distinction between the cases where, even if passive, the actor A *is* a cause of B's behaviour (as B *anticipates A's reaction and acts in form of anticipated reactions)*, and those cases where A *is not* a cause of B's behaviour. Vachudova's passive EU leverage appears to be a textbook example of Dahl's case of anticipated reactions.

In line with this argumentation we can draw a line between two types of influence the international factor can have on the establishment of a specific political regime: *spreading of the regime*, or *promotion of the regime.* We have spreading of the regime when a particular regime (in our case democracy) is spread *without* influence from the external actors[27]. We speak about the *promotion of the regime* in all those cases when the domestic actors' choices are influenced by the external actors. [28]

[27] While the term "diffusion" was rejected as too-vaguely defined in literature, we have considered whether or not to use Whitehead's concept of contagion in order to label this category, seen that: 1) the term already exists in literature, 2) it captures what we are trying to say: the lack of any action by the international actors. Two are the reasons why we opted for assigning a new label to the category, risking to be accused of conceptual untidiness deriving from assigning two labels to the same thing. The first reason concerns the origins of the term. It comes from Whitehead's 1996 typology developed in order to classify not the different mechanisms of the international influence on the process, but *the theoretical approaches* to the issue. Originally, it was thought to represent not the subject of the study, but the approach to the subject. However, already few pages later Schmitter used the term to refer to the mechanisms of international influence, not only re-defining the term, but also narrowing it from its initial meaning. Thus, the bases for a different interpretation of the term were already settled. Moreover, the criterion on which the typology was based concerned the factors included in the analysis, and in these terms, the particularity of the term is that while it envisages the passive international actors, it also appears to cut the internal actors away. This way, we still wonder if the "democratic example" mechanism should be included as a case of contagion, as it envisages an important role for the internal actors. Finally, the two other Whitehead's patterns, "control" and "consent", while well-fitting in the author's typology, if considered by the criteria we chose to use here, belong to a level of abstraction lower than the concept of "contagion", as the two actually represent different subtypes of leverage.

[28] The same difficulty we had with the label for this category, this time the dilemma concerning Levitsky and Way's term leverage. At first sight, it appears that the term, combined with the specification to the diffusion we previously made, could be used as a label for the second category. However, we opted for another term, "regime promotion", considered more suitable due to the following reasons: 1) the term leverage, even though, with some precision, potentially identical to the term regime promotion, it might be ambiguous seen that it was defined as distinct from the other term, linkage. As it results from Levitsky's and Way's work, the linkage might "reshape the domestic balance of power". The two concepts, leverage and linkage, even though, as we will see,

1.2.1. Spreading of Democracy: Democratic Example Mechanism

The literature on the spread of regime started to develop with the American fear of a "domino effect of the communist block", and was based on the assumption that if one single first democracy falls and becomes a victim to the "communism", the "disease" will spread as in a domino effect to all other western democracies. The models of contagion and diffusion developed during the cold war mainly concerned the contagion of the conflicts, war or secession requests[29]. After the third wave of democratizations, these models were used to examine the "contagiousness" of the democracy. At the same time, as with the end of the cold war, the liberalism diffused as the world-prevalent paradigm[30], and a series of studies on the diffusion of the specific policies and norms were developed.

The spread of democracy is a process mainly guided by *internal* factors. Even though the country follows the democratic example of its neighbors (or the example of some important international actor), the decision to imitate is based on the internal factors and necessities. Even though we do not consider it one of the mechanisms or strategies of the international *promotion* of democracy, there are two analytical/methodological reasons inducing us to include this model in our analysis. The first reason lies in the important insight deriving from this model that deserves to be tested. In order for an international actor to influence the domestic change, domestic decision makers need to view its attributes (wealth, security, values) as attractive and worthy of emulation. This means that the rule transfer can be possible only when there is a low level of misfit between the characteristic of the example and the goal the domestic actors are pursuing[31]. Another important lesson to be learnt from this explanatory model is that if we are to understand the strategies and capacities of the EU democratic rule promotion, before driving enthusiastic conclusions, we should check if the case being studied could be explained in a satisfactory manner by the democratic example model. We will therefore include the example model as one of our alternative explanations: before asserting the prevalent role of an external actor in democratization, we should first assess the possibility that what we had was not a case of contagion with norm.

capture an important aspect of the process, still slightly differ from the concept of "regime promotion".

[29] See Brown 2002, Saidman 1995.

[30] Goldstein and Keohane, 1993.

[31] While for the socialization process we speak about the misfit between values, and in the conditionality mechanisms we refer to the misfit between the status quo and the norm promoted, in the case of the example and spread of norm the misfit refers to the desired outcome and the norm promoted. In the case of spread of the norm, the status quo is usually delegitimized, so the actors' preferences and their balance should be used in order to assess the misfit with the external norm.

How does the contagion, or democratic example mechanism, function? According to Morlino and Magen (2008), the model considers the external actor as a passive agent whose characteristics represent the pole of attraction for the decision makers in research for policy. As Weyland (2005) describes, two are the possible "models" of the contagion, based on different assumptions on the actor's rationality. The rational learning model consist in the following steps: first of all, the domestic policy makers must be unsatisfied with the status quo. This might happen due to the failure of the previously adopted solutions, due to the public opinion pressures or it might be a consequence of the new elite coming to power. In other words, the need for the new norm is open. Secondly, as there are no available solutions (or, as the available solutions for some material or political reasons appear to be *impossible*), the domestic leaders look *outside* their domestic system for a solution to economic, social or regulatory problems. The leaders identify such solution in the normative package of a particular external actor, evaluate the rule and, if it is transferrable, they adopt and implement the rule.

The second pattern, which according to Weyland is the most capable of explaining the "S" curve shape of the norm promotion registered in the studies of the pension reform, is cognitive heuristics. According to this model, the domestic actors are interest-guided, but instead of precise research for the best-fitting and adaptable policy solution, they use the "cognitive shortcuts" to cope with an unlimited number of information. The spreading of the new norms and the innovative solutions, as well as the "S" shape of the diffusion pattern, is explained as a consequence of the "cognitive process" that leads to imitation[32].

The states are usually more interested in their neighbouring countries' domestic policies and events than to events from the "other side of the globe". When a country in the region adopts an innovative policy or undertakes some innovative reform, this attracts the attention of the neighbouring ruling elite. It can happen that, in some countries, some "problem" shows up (media and politicians comparing the domestic and neighbour's innovative policy, the advocacy coalition might mobilize, a new definition of an old problem might take place, or the ruling elite and influential groups, eager to adopt a similar design, might "create" a problem). The domestic elite looks for the first assessments of the innovative policies, and in case they appear to have a positive effect, they are strongly encouraged to adopt it. The adaptation is not necessarily taking place, which can also explain why the adoption of the external rules brings in some cases to "disastrous" effects.

[32] See Weyland, 2005.

How shall we account for the democratic example mechanisms and distinguish them from the other mechanisms? We already underlined the necessity for the external actor to be indifferent to the solutions adopted in the specific area of policy. Secondly, the norm adopted shall not be included among the issues the external actor isn't *recommending* or requesting. The adopted rule shall be similar/identical to the rule already implemented by another state/states and it shall be considered (most or at least "most among the solutions fitting the domestic conditions") efficient and positively assessed. The imitated state shall be considered particularly well-performing in a specific area of policy and this success shall be proved by the result of this norm. On the one hand, the domestic actors shall be unsatisfied with the domestic situation, while, on the other, at least the ruling elite shall be favourable to the adopted rule. We can add here the criteria deriving from the model of cognitive heuristics (yet, not the case when we speak about rational learning): the "imported" policy should be innovative, or "striking" in some other sense, or some dramatic events shall attract the decision maker's attention. The cognitive heuristic model is, among other things, based on the "availability heuristics", referring to "people's tendency to award excessive importance to information that is especially immediate and striking, grabs their attention, and is therefore uniquely "available" (Weyland, 2005, p. 284). The last Weyland's criteria, "existence of the domestic problems", is a bit problematic: as the garbage-can models in the public policy analysis showed, the problems are not necessarily preceding solutions, neither are the policies always designed in order to solve an existing problem. We believe that it shall be reformulated: instead of the "existing problem" requirement, we introduce "the-decision-makers'-interest-to-adopt-the-rule" requirement. This interest can derive from their belief that the policy would solve a specific problem, or from their personal benefits from the particular solution. What is important is that: 1) the external actor is not promoting the norm; and 2) the domestic elite is not opposing the norm, but it is *active* and has an interest to adopt it.

1.2.2. Promotion of Democracy

On the opposite, we have a group of concepts concerning democracy promotion. As stressed above, this group consists of all those concepts implying an active role by the international actors. The first criterion that appears important in distinguishing between different modes of influence is the use of violence. Both Whitehead, when distinguishing control and consent[33], and transitions literature underlined the particularity of transitions that

[33] See Whitehead, 1996.

took place in the periods of warfare[34]. This induces us to distinguish between cases of regimes *imposed and controlled* from the outside with the use of force, and those cases where the regime promotion was not accompanied by warfare.

This way, all three "paths of re-democratization" identified by Stepan, as well as Whitehead's "democratization through conquest", "democratization through control" and "democratization through imposition" are the concepts created to describe the "warfare related democratizations".

What we are left with are concepts such as: "democratization through conditionality", "socialization", "social learning", "rule transfer", "active or passive leverage" (in Vachudova's terms, 2001), "consent", to list only some of them. In the different paragraphs of "International dimensions of democratization", Whitehead (1996) also identifies the "democratization through decolonization", "democratization through incorporation" and "democratization through convergence" as the process in which the international role is the salient explanatory factor. In different parts of the book the author names at least two different typologies, the common element of which is the category of the incorporation. It appears unclear if the "democratization through incorporation" represents as a subtype of the larger category of "democratization through imposition" (together with "democratization by invasion" and "democratization by intimidation"). If we assume that this form implies the use of force (as the word "imposition" induces us to believe), what is the difference between "democratization through conquest" and "democratization through incorporation"? After all, while considering the cases of Puerto Rico or Hawaii where the incorporation was undertaken through the use of military force, the author also includes the case of the German unification as an example of the democratization (of the Eastern Germany) through incorporation[35]. What are the levels of abstraction of different concepts and in which measure do different categories imply the use of force (compare the classifications in "Democracy Convergence: Southern Europe" and in " Imposition of democracy: the Caribbean", both in Whitehead 1996)?

Such confusion over the concept of democratization-through-incorporation derives from a common feature this case shares with another category, "democratization-through-convergence". This common characteristic is clearly identified by Whitehead: in both cases, issues of identity politics arise and the re-definition of the identities take place. Whitehead's

[34] See Stepan, 1996.
[35] See Whitehead, 1996, p. 258.

unease derives from the particularity of the incorporation: on one side, it applies the use of force, and we can classify it as "imposition". But on the other hand, there is an acceptance of incorporation, no classical resistance as in the cases of conquest; moreover, there is the process of identity re-shaping[36]. It puts the author in a dilemma: shall he consider the incorporation, such action involving the use of force in the cases he analyzed, a sub-type of democratization by conquest? Or to distinguish it from this, but if so, how can we account for the use of military troops? It seems that Whitehead, as well as the other authors, finds out that there is a kind of "particular type of externally influenced democratization" in which the identities are re-shaped. Evidently, the presence of EU made all scholars come to the same conclusion: there appears to be some particularities in the process when a supranational actor is involved. For Whitehead, the important factor here concerns the "identities". And if we come back to his last category, unfortunately less precisely developed than others, democratization through decolonization, we might observe how, even in that case, the "re-examination" of identities and polity was involved[37].

In the same volume, Schmitter identified four "sub-contexts of international context" through which the external actors might influence the democratization. Beside the three concepts Whitehead used in his classification of approaches (contagion, control, consent), Schmitter added a fourth one, conditionality. Two dimensions are taken in consideration:

- The dimension concerning "basis for action" distinguishes between the "contexts involving at least a threat, if not even the use of coercive authority (control and conditionality), and those whose effects depend on voluntary exchange (contagion and consent)";
- The dimension concerning "the number of actors", where the "key distinction is between the unilateral processes of international influence or power, in which one actor intentionally or unintentionally affects another (control and contagion), and multilateral ones that involve several, often competing, sources of influence or power and typically work through international organizations rather than purely national channels (conditionality and consent)" (Schmitter, 1996, pp. 28 - 30).

As we see, Schmitter's typology appears somewhat confused: the labeling of the categories leads to perplexities over the meaning of the concepts: the three categories deriving from Whitehead changed their original meaning. The contagion becomes a unilateral process where

[36] See Whitehead, 1996.
[37] See Whitehead, 1996.

the "voluntary basis of the action" leaves some concern about whether the international actor is active or not. The conditionality starts to apply only to those cases where coercion is used (how do we then account for EU conditionality?). The control on the other hand becomes possible only in the unilateral relations (how do we then account for the International Protectorate in Bosnia, or in Kosovo?). Finally, the consent becomes a concept identified by a new criterion added to the two already used for classification:

> "A complex set of interactions between international process and domestic groupings that generates new democratic norms and expectations from below… that in extreme might lead to the irresistible drive to merge with an already existing democracy, in a milder form it underlines the desire to protect democracy within a given state by joining a regional block" (Schmitter, 1996, p. 30).

Schmitter's typology is interesting not only for the types it identified and criteria it used, but also for the intuition behind the dimensions that Schmitter used for the classification of the concepts. The use of forces is a first classificatory criterion, while the other represents an attempt to underline the importance of international organizations rather than purely national channels. Here we can also recognize a dilemma similar to Whitehead's: the intuition that there is a substantive, qualitative difference between the single state's influence and the international organizations' influence.

Another interesting work that was guided by similar questions of international influence is Levitsky and Way's reflection of the two dimensions of the post-Cold War international environment: leverage and linkage. "Western leverage" refers to the "governments' vulnerability to external pressure, while linkage to the West concerns "the density of a country's ties to the United States, the European Union, and Western-led multilateral institutions" (Levitsky and Way, 2005, p. 21). Here again, as we compare the usage of the concepts, the original text and their interpretations in literature, we can observe a slight confusion over their meanings. The conditionality, the diplomatic pressures, the military intervention, the socialization, all became the "mechanisms (subtypes) of leverage", instead of, as the authors try to mark in their article, ways in which the international actors may exert the leverage[38]. The authors are not so clear about how we should distinguish between "leverage" as vulnerability to external pressure and "leverage" as the label for a series of actions put in place by the external actors. We believe that the distinction between the two is useful and conceptually necessary. The distinction between the exercise of leverage and the leverage itself is similar to the distinction Oppenheim (1958), Dahl (1967), Laswell and Kaplan (1950) make

[38] See Levitsky and Way, 2005.

between *potential* power and *exercised* power, between *having* and *exercising* influence, as the actors do not always exercise the power they potentially have. It is not a mere linguistic punctuality. Only by distinguishing potential and exercised power we can face the question of why sometimes the potential power is not exercised. In the field of this research we can, for example, open the question on why the EU did not use its potential powers in the very beginning of the Eastern Europe transition, but started to use what Vachudova (2001) labeled "active leverage" only in the second half of the '90s.

Going further into the analysis of Levitsky and Way's definition of western leverage, another observation shall be made. The two authors define leverage as the "vulnerability of governments to the external influence", and further on, they identify the determinants of the leverage in "states' raw size and military and economic strength". What they use are the same dimensions that are identified by the scholars of international relations as the sources, dimensions or indicators of the state's power and their position in the international structure[39]. The same factors (economic richness, size and the availability of means of coercion) are considered in literature as resources, basis or spheres of influence of power[40]. From this perspective, the Western leverage seems to be the mirror reflection of the target state's potential power. The stronger the national basis in a specific resource of power (richness, military strength, but also other resources such as links with third actors etc), the lower is the western leverage, or better say, the less power the external actor can exercise by acting in the

[39] Krasner 2000, "State Power and the structure of international Trade", in Frieden and Lake, 2000, International Political Economy, London, Routledge pp. 19 – 36; Clementi Marco, 2005, «L'egemonia e i suoi limiti», in Rivista italiana di scienza politica, XXXV, 1, pp. 30-56; Gilpin Robert, 1989, Guerra e mutamento nella politica internazionale, Bologna, il Mulino; Gilpin Robert, 1990, Politica ed economia delle relazioni internazionali, Bologna, il Mulino; Kindleberger Charles, 1997, I primi del mondo, Roma, Donzelli editore; Mastanduno Michael, 1997, «Preserving the Unipolar Moment», in International Security, 21, 4, pp. 49-88; Modelski George, 1978, «The Long Cycle of Global Politics and the Nation-State», in Comparative Studies in Society and History, 20, 2, pp. 214-235; Organski F.K. And Kugler Jacek, 1980, The War Ledger, Chicago, The University of Chicago Press; Waltz Kenneth, 1993, «The Emerging Structure of International Politics», in International Security, 18, 2, pp. 44-79; WALTZ Kenneth, 2000, «Structural Realism after the Cold War», in International Security, 25, 1, pp. 5-4. For this point the author thanks the kind assistance of a scholar of international relations, Napolitano Jamel, whose knowledge in the field made the above citations possible. The above bibliography is drawn by Napolitano's study on the shift of hegemony.

[40] Thus, Laswell and Kaplan identify both economic richness and coercion as the "values" that might be at the base of power and the sphere in which the power is exercised. The same can be said for Oppenheim, who distinguishes the *means* and *modes* of control. Thus, while dissuasion and restraint are *modes* of control, information, emotive appeal, material reward are the *means* by which control can be exercised. Going further, from the theory of power to the comparative politics, we can observe how the richness and *size* (in terms of number of members, for example) have been considered as the resources of power in the studies of political parties, social and interest groups, social movements and participation. In these cases coercion is omitted as in the domestic politics the state keeps the monopoly on violence.

respective sphere. The richer the target country, the lower is the EU capacity to exercise influence by using its financial power.

Another dimension of the international context identified by Levitsky and Way (2005) is linkage, or, in other words, the "density of the countries' ties to the United States, the EU, and Western-dominated multilateral institutions" (ibidem, p. 22). The authors argue that the degree of leverage and linkage explains the importance of the international factors in the process of the democratization. The conclusion is that the higher the government's vulnerability to Western influence and the degree of linkage with West, the more important is the external factor of democratization and the more successful the democracy promotion. On the other hand, high leverage without linkage results in sporadic international influence. Finally, in those cases where both leverage and linkage are low, the international pressure is weak and the domestic factors are predominant in the process.

The problem with the two dimensions of Levitsky and Way (2005) is that they are not independent one from the other. The fourth analytic possibility, low leverage in a situation of high linkage, is not considered. Two are the reasons: first of all, a high level of linkage produces high leverage. By increasing the number of ties, contractual, formal and informal links between the countries, the interdependence of the two also grows and so does the leverage.

However, Levistky and Way's contribution in the field is important, as the dimensions they identify draw the attention onto two other important factors in the study of the international dimension of democratization: the resources of power of the "target" government that might be used to avoid external influence, and the institutional links between the target state and the external actors.

At the end, we come back to the concepts created while studying the role the EU had in the democratization of the ex-Communist Europe. Developed in the sub-field of the EU enlargement literature and literature on europeanization, many of these concepts are marked by the ongoing debate on the role of material benefits and values, between rationalism and constructivism, between the logic of appropriateness and the logic of consequences.

The two most important concepts developed in this literature are the democratic conditionality and democratic socialization. The largest part of literature is dedicated to the question about what kind of incentives were more important in democratizing the CEECs: was it the set of material benefits, or the EU's western identity with its symbolic (even moral)

value? In order to maximize its policy export, should the EU use external incentives and conditionality or the "social learning" generated by "EU-centered epistemic communities" (Magen, 2004, p. 4)? Unlike the literature on the international role of democratization, where the core theories are still lacking, when it comes to the EU conditionality and socialization the scholars explored different factors and created numerous analytical models. Particular attention was given to the process of EU democracy promotion in different countries, and to variables such as costs of compliance, the cultural match between domestic and EU norms, the existence of viable foreign policy alternatives (or lack thereof) were developed as factors influencing the outcome. As the mechanisms of both conditionality and socialization are included in the EUCLIDA (the relation between the concepts will be exposed later on), we will give them more space when developing our analytical framework.

Here we would only like to connect the two concepts of conditionality and socialization with the concepts developed in the studies on the international dimension of democratization we examined above, and try to establish the relation between the different terms. Conditionality is usually defined as the activity where an international actor uses incentives or threats in order to make pressure on the domestic actors, producing a shift in their cost-benefits balance and bringing to the rule adoption. Socialization is a mechanism deriving from the constructivist literature according to which the normative pressure forces the domestic elite in search of legitimization to embrace the international norms, while their preferences and identities are modeled through the process of social learning. We might observe that the two concepts represent the different strategies the international actors might use in order to influence the democratization in a country. In Whitehead's "democratization through convergence" both tactics might be applied in order to influence the target government or other domestic non-governmental actors, and were described in the analysis of democratization through convergence in Portugal, Spain and Greece. In his work, Whitehead brings the examples of what will be later labeled membership conditionality (EC required its members to be democratic states) and of what will be labeled socialization ("mobilization of the shared political symbols and values in a manner which partially redefined the identities of all participants to the convergence process", Whitehead, 2001, p. 258).

Schmitter's type of "consent", as it was also previously stressed by Whitehead, implies the use of conditionality as well as the use of socialization channels, and even the influence on the internal distribution of powers. Further on, we might observe that, even in those cases where

force is implied, some kind of socialization and social learning might take place. In some cases, the military defeat and the subordination that follows might bring to the de-legitimization of the previous norms and practices, facilitating the legitimization, introduction and acceptance of norms deriving from the winners in the hope that these new strategies (norms, practice, weapon) will help "win the next war".

We can further observe how different strategies might be used simultaneously: if we consider the nation states not as unitary actors, but as composed of different groups with different, sometimes competing interests, we might observe that not only the socialization and conditionality might be used towards the same actors (national government), but external actors might also decide to use conditionality towards one actor and socialization towards another. If we consider Milošević's Serbia, we might observe that while pressure and conditionality were used towards the governmental actors, at the same time socialization was used towards the opposition parties. Moreover, we can observe how in some cases the socialization of certain actors might cause a change in the domestic distribution of powers.

This uneasiness of the dichotomy and exclusiveness between conditionality and socialization was faced by some authors. For example, Schimmelfennig, Engert and Knobel (2003) developed a typology of mechanisms distinguishing between material bargaining and social influence depending on the kind of reward offered to the target countries, and between intergovernmental and transnational channels of reinforcement. The authors showed how the conditionality allows other methods of influence, such as the normative pressure and persuasion, to be pressed by the promoter with greater confidence, since the rhetorical actions are then made in the shadow of the material incentives for compliance. At the base of this reasoning is the recognition that economic interests, but also knowledge, values, fear, geopolitical reasons, emotions, identities etc can all be used in the "trade" where one actor is able to influence the other actor's behaviour through the exchange of these "goods". Here again we might find the reflections on the power in political science useful. We can notice how the "goods" used for exchange (knowledge, economic assistance, military relations etc) correspond to different "values" in the terms of Laswell and Kaplan, while on the other hand, conditionality, influence on the internal distribution of power, or the re-definition of identity, which is connected with socialization, represent the *forms, modalities* in which the power can be exercised. The "incentives" and "threats" in Parsons' typology of the "modes of social

control"[41], or Dahl's "promises" and "threats", perfectly match the two identified "types" of conditionality: conditionality through reward or through threat.

We can distinguish the resources of power (economic, military situation, size, geopolitical position, technology, authority, symbolic values etc.) of international and domestic actors. The identity, values and knowledge terms used in the literature on socialization describe the resources of power, and the same is true for the material benefits, security etc. From this point of view, the debate between conditionality and socialization in these narrow terms is the debate on which the resources of power are more convincing.

The conditionality by reward (Dahl's promises) and by threat (in Dahl's terminology), as well as socialization (when it appears in the form of persuasion and social learning), or the influence on the distribution of power are the *forms* in which the relation between the actors is established[42]. The democratization "through convergence", or "consent" used by Whitehead (1996) might imply both socialization and conditionality.

Bearing this in mind, we might try to examine the different criteria used by the authors in order to identify the possible paths of international influence on the establishment of the specific type of political regime:

- Presence/absence of the external actor's intention/interest for the change of the regime in the country: spread or promotion? (Whitehead 1996 contagion vs. control and consent; Linz and Stepan 1996: zeitgeist and diffusion vs. foreign policy; Morlino and Magen 2008: democratic example vs. democratic conditionality and democratic socialization).
- Use of force, warfare vs. "peacefare" (Whitehead 1996 control vs. consent, democratization through conquest, democratization through imposition vs. democratization through contagion; Schmitter 1996 control vs. contagion and consent; Stepan 1986: restoration after external re-conquest, internal reformulation and externally monitored installation vs. *no possibilities*)[43].

[41] See also Goio, 2003.

[42] Compare with the following reflection over conditionality by Mattina: "Sulla base di quanto finora sostenuto si può, dunque, affermare che la convergenza è il processo che influenza le scelte degli attori politici interni impiegati nella trasformazione da economica a politico-istituzionale, mentre la condizionalità è una modalità della convergenza…" (Mattina, 2004, p. 27).

[43] The same criterion is also used by Mattina when discussing the differences between USA and EU democracy promotion strategies, where the USA type of "exportation of democracy", for which military strength is a necessary condition (but not necessarily the use of violence), is compared to the more peaceful and less intimidating approach of the EU's "convergence strategy". (see Mattina, 2004, p. 315).

- The nature of the actors involved and the type of relationship between the actors (Levitsky and Way, 2005 high linkage vs. low linkage; Schmitter 1996 nation channels vs. international organization; Whitehead 1986: presence vs. absence of the contractual links).
- Tackling the question of national identity or not (Whitehead 1996: democratization through convergence, democratization through incorporation [44]and, we might argue, also the democratization through de-colonization vs. cases that do not imply the redefinition of the national identity, all of which in Whitehead refer to the "warfare" methods).

1.3. International Anchoring of Political Regime

As stressed in the introduction, our analytical model will be based on the framework that Morlino and Magen (2008) designed with the aim to understand the result of the *EU* promotion of the democratic rule of law. The central concept of their research is the international anchoring, defined at the beginning of the work as a process characterizing the EU democracy promotion:

> "Democratic anchoring is the "process that may be suggested to begin to characterize EU democracy promotion, that is, the binding of domestic institutions and law to supranational networks of norms and standards and the related convergence of Western European political and economic structures" (Morlino and Magen, 2004, p. 11).

In its last versions, the authors observe the broader goal of the concept, defining the international anchoring of democracy as:

> "A mechanism by which actors, be they domestic or international, may influence democratization processes. It involves the binding of domestic institutions, policies and elite circles *to supranational rules and institutions* characterized by commitment to liberal-democratic values. " (Morlino and Magen, 2008, p. 18).

The difference between the two definitions concerns the level of abstraction: in the first, the authors concentrate on the EU, while in the other they perceive the international

[44]On whether or not the "democratization through incorporation" implies the use of force, see the discussion above. We can simply distinguish between peaceful and violent incorporation. The peaceful incorporation, a clear example of which is the democratization of the Eastern Germany through German re-unification, is an example of the peace-fare democracy promotion process during which the domestic identities are re-examined and that is undertaken by a single state.

anchoring as a concept that can include whichever supranational institution that promotes democratization through linkage and boundary removal.

In this section, we will first describe the EUCLIDA model, which we will revise in the next chapter to build the EUCLIDA model, by developing the hypothesis concerning the supply side.

The particular advantage and innovation of EUCLIDA was the precious insight on the importance of the two phases of the policy-making process, usually neglected in the studies: rule implementation and rule internalization. The two are added to the traditionally studied phases of rule adoption to build three layers of international anchoring. The distinction of the various phases of policy-making and attention given to the rule implementation phase allowed both to better evaluate the effective outcome and to analyze the dynamics of the process. The authors developed the hypothesis that considers the particularities of the layers, allowing, at the same time, the cross-layers analysis. The model allows us to single out the obstacles that might appear in the two understudied layers and to study the process of the *democratization* of a certain country, and not merely the international actors' efficiency in ensuring the rule adoption.

The hypotheses of the analytical framework are organized around the three layers we described. *The rule adoption* means the approval of domestic legislation, the establishment of domestic institutions as suggested by external actors, thus giving reality to democratic anchoring, regardless the goal and intensity of the rule adopted (see Morlino and Magen, 2008). In order to understand the sub-process that brings to rule adoption, the authors distinguish two main actors: the international actors (IA), whose action needs to be met by that by the domestic actors, some of whom might be change agents (ChA). The action of the international actors, as we saw, might assume any form of relationships of influence: democratic conditionality and socialization both included. What is a necessary condition, regardless what strategy is used, is that the action is *credible*. In other words, the action must be combined with the existence of the commitments and resources necessary for its success. The credibility is differently operationalized as we pass from one form of action to the other. The credibility in the case of the democratic conditionality concerns the credibility of the reward and threat, while in the case of social learning it concerns the compliance with the rule promoted by the EU member states (we will see more on the credibility of the conditionality and socialization further on).

As the model does not imply the rule *imposition,* the credible action of the international actor should meet the action of domestic Change Agents in order to achieve the rule adoption. Morlino and Magen stress that, in order to understand the rule adoption in the subject states, we should also consider the degree to which "change agents" are present in the domestic system. The change agents are domestic actors devoted to the rule adoption, with certain resources of power and a certain level of influence on the decision-making process. They try to press the decision makers to adopt the democratic rules by increasing the costs for reform-recalcitrant elites, and/or engage domestic decision makers in processes of persuasion and social learning to redefine their interests and identities.

A shift in the costs and benefits balance is another important factor of both EUCLIDA and EUCLIDA revised. It is a key notion drawn upon a logic of consequence, where the rule adoption depends on the calculation of benefits and costs of compliance. The rule adoption is possible only when the balance between costs and reward to obtain is positive, or when at some point there is a shift in this balance. In the model proposed by Morlino and Magen, the notion is unpacked in order to take into account some of the main factors singled out in literature.

The calculation of costs is influenced by the level of misfit (see the literature on europeanization, especially Borzell and Risse, 2000, 2004), the goal of the rule promoted (if the rule concerns the "low" or "high" politics), the strength of the domestic opposition to its adoption.

In the calculation of the benefits and balances, the crucial component is the preference of the government and other veto players. On a level of empirical analysis, this means that all actors whose agreement is necessary for a change in the status quo and those who bear the significant net costs of rule adoption contexts have to be taken into account and their relative strength in different policy areas shall be considered.

Morlino and Magen pay special attention to the shift of cost-benefit balance in the perception of decision makers. In the framework, the preferences of the decision makers are not fixed: the interactions between decision makers and international actors and/or change agents may bring to changes in the opportunity structures, to the empowerment of change agents, part of the ruling elite, or civil society groups, and to the weakening of veto players. This brings to a change in the cost-benefit balance, which may bring to a policy reassessment and subsequent rule adoption.

Two other factors that Morlino and Magen take into account in order to explain the rule adoption are domestic fluidity and the presence of alternatives. Political fluidity is a situation of openness of the domestic system to the external influence due to some drastic events such as the collapse of an ideological regime (end of a previous paradigm), some deep internal crisis or conflict. It is characterized by a situation where there is pressure for the re-orientation of state direction (on elite and/or society level). This is often the case when there is a new ruling elite, the previous practices and norms are delegitimized, the structure of power deriving from the previous norms is undermined, while state leaders are in search for new policy solutions. The policy windows are open, while the elite is more open to external influence. In these cases, we should pay particular attention to distinguish between the norm promotion and the spreading of the norm, for, as we argued above when discussing the models on "contagion", the same setting also favours the spreading of the particular norm, which represents our alternative explanation.

Another important factor of the EUCLIDA model is the presence of alternatives. The presence/absence of economic and political alternatives to the international actor may undermine its efforts by decreasing the size of promised rewards, entering the cost-benefits calculations, and offering an alternative example and source for social learning. We should take into account if the government has (or more accurately, *believes to have*) an alternative source offering comparable benefits. The effectiveness of the EU promotion efforts will increase in those cases where EU is perceived as vital to the state's economic and political well-being, while the influence of other actors is limited.

When does the rule adoption take place? Morlino and Magen summarize the sub-process of rule adoption in the following way:

> "When credible actions of IA are complemented by actions of committed change actors, then there are changes of opportunities structures, empowerment of change agents or of governmental elite or of civil society groups and relative weakening of veto players; if so, there is the possibility of a shift in the cost-benefits balance for decision makers; if there is domestic fluidity and no presence of domestic or international related alternatives, then the shifts bring a policy reassessment; if there is a policy reassessment, then there can be rule adoption. But there is also the opposite possibility at every step, of course especially if no policy reassessment occurs. "

Rule implementation refers to the development or improvement of the rules, governing institutions and administrative structures necessary to implement the adopted changes. This means that the layer of the rule implementation is strongly linked to the development of the institutional and administrative capacity (see Morlino and Magen, 2008). The sub-process of

the rule implementation also requires the credible action of the international actor as well as the commitment of the change agents. In the cases we analyze it is important to account for those situations where the domestic actors are willing to adopt and internalize the promoted rules, but are lacking the necessary action capacity.

In the phases of rule implementation "the point of departure is the moment when the credible actions of international actors are complemented by the commitment of change agents with regard to the setting up of an institutional and administrative capacity to formulate, implement and enforce the law" (Morlino and Magen, 2008, p. 25). According to Morlino and Magen, if the credible action of IA is completed with commitment of the change agents, then "a growth of knowledge resources, of material resources and learning opportunities inside the country takes place" (Morlino and Magen, 2008, p. 25). The growth of institutional and administrative capacity and the process of implementation may be filtered and occasionally stopped or distorted by the bureaucratic inertia and the lack of commitment by the decision makers. In these moments, even the rule adoption is seriously undermined, and only further actions by the international actors and change agents can possibly overcome these difficulties. The outcome, as in the case of the rule adoption, is twofold: the rule implementation in case of success, or the lack of any positive result in those cases where we find strong bureaucratic inertia and lack of commitment.

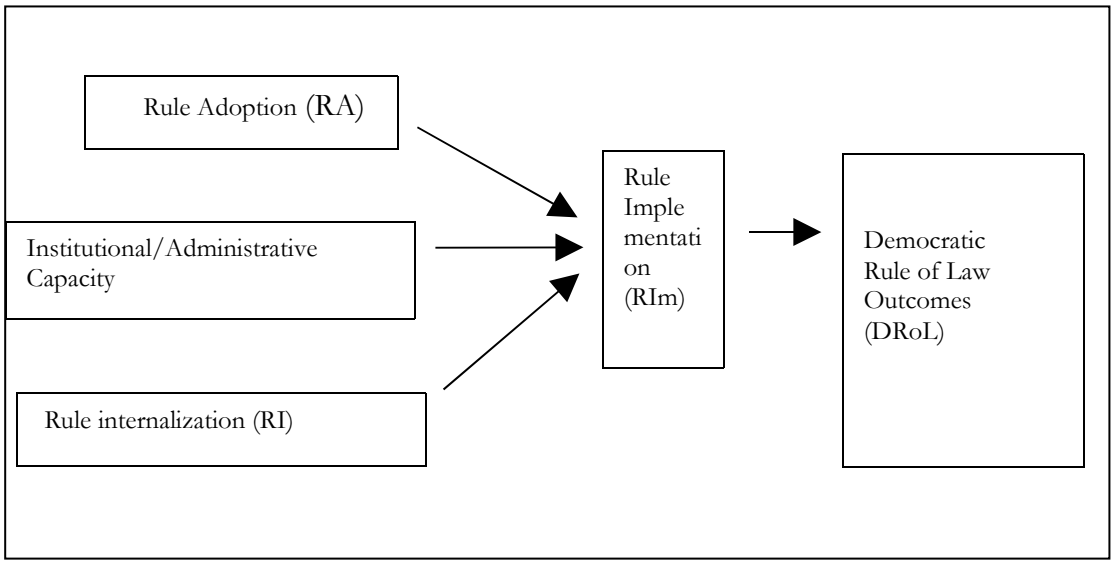
Finally, the third layer concerns the *rule internalization*. Rule internalization represents the acceptance of the transferred rules, a slow and gradual process of legitimization of the adopted rules and institutions. Only when rules become internalized, the rule adoption and development of the IAC (institutional and administrative capacity) become something more concrete than a mere superficial result with no actual meaning. Rule internalization process is the most distinctive of all three layers of the international anchoring: it is distinctive as it concerns essentially cognitive processes at both an elite and mass level, and in this process what is crucial is value commitment of the change agents. According to Morlino and Magen, in this layer the presence of a previous value commitment of change agents to democracy is necessary, better if complemented by the presence of similar values in the civil society. If there is some commitment to the pluralistic liberal values, then the rule adoption might bring to the further diffusion of those values. The presence of domestic alternatives to the values promoted by the democratically-oriented change agents could possibly undermine the process of internalization. Another important factor for the rule internalization is the rule adoption. If

the rule is adopted, there is a lack of domestic alternatives, and the change agents committed to the democratic values are present, then the democratic value can spread, bringing to an enlargement of the democratic constituency and some level of rule internalization might be achieved.

Another important concept identified by the two authors concerns the *cycles* of the international anchoring and it refers to the tendency in a certain period of time. Anchoring being a very long process, there might be periods when the process is going to the direction of the anchoring of the democratic rule of law, where different events and moments, occasionally close in time, follow the same direction. It can also happen that certain periods are characterized by long stops or even a reversal of direction. The switch of cycles might be a consequence of the feedback of the entire process that caused the change in preferences and incentives, but it can be triggered by other factors as well. Distinguishing between different cycles is an important innovation of the two authors comparing to the rest of the literature, as this way the linearity assumption of the process is avoided and the "time variable" is also taken in consideration, allowing a better understanding of the process and variables that brings to a stronger democratic rule of law.

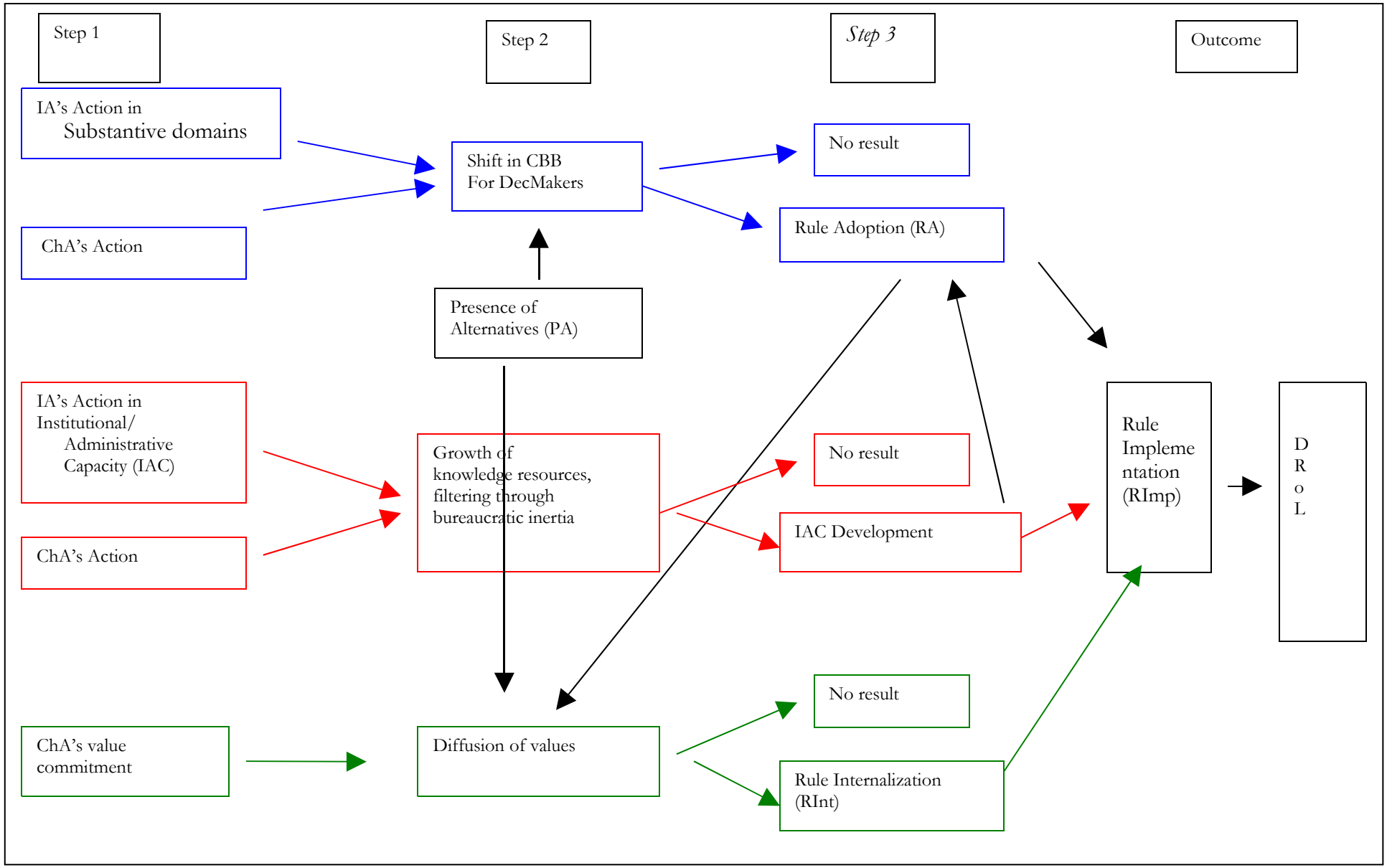
The three layers described here are substantially different, but yet strongly interrelated. There can be no implementation of a rule that was not adopted, making rule adoption the necessary (but surely not sufficient) condition for the implementation. In order to have any implementation, the rule must be at least partially internalized, or, in other words, considered legitimate, otherwise it will become dead letter on paper. Moreover, the rule adoption and rule implementation are strongly linked with the institutional and administrative capacity, making the entire process possible *only* when that capacity begins to develop at least through the process of adoption and implementation. In Figures 1 and 2 we bring the summary of the entire model made by Morlino and Magen with its different hypothesized connections. The figure 2 displays both the connections between different factors of the three-layer sub-process, and the connections between the different layers. It is important to note that the process of international anchoring is a complex process, with three different sub-processes going on, not necessarily with the same actors involved, surely not necessarily with the same outcome. Such complexity makes such process particularly difficult and long: it may be obstructed and reversed in many points, as we need a positive outcome in all three layers for the development of the democratic rule of law.

Figure 1: "The outcomes of EUCLIDA".



(source: Morlino and Magen, 2008).

Figure 2: "EU Cycles and Layers of International Democratic Anchoring (EUCLIDA)".



Legend:

IA = international actors

ChA = Change agents

ChA's Value commitment = commitment to values such as the rule of law, tolerance of opposition, respect for different opinions, civil and political rights.

IAC = Institutional and Administrative Capacity

CBB = Cost-Benefit Balance; a shift in CBB is related to a change in opportunities structures, empowerment of ChA or other governmental elite, or civil society groups, relative weakening of veto players.

PA = Presence of Alternatives.

RA = Rule Adoption: RA concerns the approval of domestic legislation, domestic establishment of institutions.

RInt = Rule Internalization

RImp = rule implementation

DRoL = democratic rule of law

Note: the three layers represent differences in the timing of the steps.

Source: Morlino and Magen, 2008.

2. EUCLIDA REVISED

2.1. Anchors and Anchoring: Origins of The Concept and The Levels of Abstraction

As we underlined in the previous chapter, the concept of the international anchoring is not limited to the study of the *EU* democracy promotion: the authors themselves offered a definition independent from the identity of the external agent, allowing any international actor satisfying some specific criteria to be engaged in the process.

Before further developing the analytical framework for studying the process of the democratization through the international anchoring, we'll first examine the definitions of our core concept and try to identify the general criteria to be used when screening for possible agents other than the EU capable to serve as international anchors.

The concepts of *anchors* and *anchoring of democracy* were developed by Morlino in his study of the Southern European democratic consolidations, where the basis of the theory of anchoring presented in 1998 were further developed. An anchor, as defined by the author, is:

> "An institution or a mechanism, entailing organizational elements and vested interests, that is able to perform a hooking and binding effect on more or less organized people within a society" (Morlino, 2005, p. 745).

According to the theory of anchoring, the mechanism of anchoring is a top-down mechanism by which the elite, by using the intermediate structures (political parties), exercises binding effects on the interest groups and society, in a manner to maintain the democratic regime. Such mechanism can serve as a compensation for the bottom-up process of legitimization that was traditionally conceived as a necessary condition for the consolidation of democracy (see Morlino 1998, p. 338-339). According to the theory of anchoring, if the strong anchors capable to ensure the maintaining of the regime are present, the consolidation is possible also in absence of the bottom-up legitimization. The type of legitimacy (exclusive vs. inclusive) in combination with the kind and strength of the anchors allows us not only to understand the consolidation in those countries with a low level of legitimization, but also to analyze the quality of the democracy established and the possible crisis (see Morlino, 1998, pp. 338-345; Morlino 2005, p. 744).

In the study on the Southern European democratizations, Morlino identified four "domestic" anchors of democracy. As under the conditions described above any institution can perform the anchoring effect, the author underlines that there is also a possibility that a regime becomes externally anchored:

> "…Supranational actor, such as the European Union, and the rules resulting of one or more international treaties such as those on human rights or those on the accession process to the Union, can exert a strong anchoring effect on political elites and citizens of a country…" (p. 750)
> … "With an exclusive legitimization and weakly developed domestic anchors, some consolidation is still possible if limited sovereignty is accepted by governing elites of the country through some international agreement that keeps the regime democratic, that is, an external anchoring is achieved" (Morlino, 2005, p. 753).

The concept of the anchors in literature was mainly analyzed in the democratization studies and is therefore strictly linked to the anchoring to the democratic political regime. The domestic anchors identified by Morlino were then necessarily typical anchors for the democratic regime (the links between parties and society described by Morlino are possible *due to* the presence of the democratic rules). Even though in literature the concept was never used to explain the consolidation of other types of regime, we can theoretically imagine the process of the anchoring of an authoritarian regime in a certain ideology, personality, institution etc, especially seen that the undemocratic regime usually lacks a bottom-up legitimization. The international anchoring, also, is not necessarily linked to the anchoring of democracy. We might conceive the Soviet "block" and the communist regimes in Yugoslavia, Hungary, Poland, Romania, etc as anchored to a Soviet block, where the action of promotion of such regimes was based not only on force, but also on the socialization channels (like the Comintern for example). We believe that the theory of anchoring should be given a wider significance in the study of the consolidation of political regimes in general. This is particularly important for the concept of the international anchors that, as we will see, is not influenced by the type of domestic regime like with the domestic anchors. This distinction between the *content* of the regime and the *process* of the consolidation (and/or international promotion) of the regime would allow us to open a number of quests for further analysis. To mention only some, we might ask if, and under which conditions, there were cases of international anchoring of authoritarian regimes (one possible example would be the communist block), and, if yes, we might try to compare the efficiency of different actions when promoting a democratic and when promoting a specific authoritarian regime. Or we can study the anchoring of democracy and try to examine the impact the process of international anchoring

produces on the domestic anchors[45]. Finally, we might study the efficiency of the democratization through international anchoring vs. democratization through *other* forms of international influence.

2.1.1. International Anchor and Anchoring: Definition and Confrontation with Existing Terms

What is the international anchor and how is it created? How does the international anchoring relate to other concepts identified in the previous chapter?

While the anchor of a political regime was defined as an institution able to perform a binding effect on more or less organized people within society, the international anchor is an institution (an actor, but also a treaty, organization such as EU with a large scope of competencies, but also an international convention) at the *international* level capable to exercise a similar effect of hooking and binding the domestic political elite and/or society to the democratic norms.

Morlino and Magen in their work define an anchor as:

> "…Binding of domestic institutions, policies and elite circles to supranational rules and institutions characterized by commitment to liberal-democratic values. In practical terms, anchoring involves: (1) subscription to international conventions and soft-law on economic regulation, protection of human and minority rights, anti-corruption measures, labor and environmental rules; (2) submission to the jurisdiction of supranational courts (such as the European Court of Human Rights or the International Criminal Court); (3) formal participation to various international institutions, agencies and forums; (4) involvement in collective conflict prevention, crisis management and other collaborative problem-solving activities" (Morlino and Magen, 2008).

It represents a creation of the linkages between the target state and the international level that, among other, also implies the adherence to the democratic norms and creates the external incentives for the domestic actors to comply. The international anchors, unlike the domestic ones that are democratic per definition, are not necessarily democratic. This practically means that while the "support for the democratic regime" was self-understood in the mechanism of the domestic anchors and the material interests were a basis for the relation between the anchor, society and groups, the international anchoring must necessarily have the dimension of democracy promotion.

[45] Morlino underlined already in 1998 that the European integrations might have a deep impact on the anchors established in the countries of Southern Europe, patronage and gate-keeping role of political parties being identified as particularly vulnerable. See Morlino, 1998, p. 345.

Yet, it would be erroneous to claim that the international anchoring is equivalent to the process of democracy promotion. The difference between the two concepts is in the level of abstraction, in the outcome they produce and in the focus of the analysis. The democracy promotion includes a series of mechanisms of external influence (it can include both the peaceful mechanisms and those implying the use of force), and as such appears more abstract than the concept of international anchoring that excludes the use of force. As far as the *phases* of the democratisation process are concerned, the democracy promotion is a process that can be considered limited to the instauration of the democratic regime, while the anchoring exercises an important influence also in the phase of the consolidation and possible crisis. While there are no democracy promotion strategies in place in Slovenia or present-day Italy, we can still claim that the anchors that were developed, domestic or international, are still present and might, in case of a regime's crisis, get again to play an important role. This takes us to the third important difference between democracy promotion and international anchoring: the capacity of the anchoring theory to explain the domestic crisis as well. Concentrating on the international dimension of democratization as a process of building the international anchor of the political regime, we also have the possibility to study the crisis as well as the de-anchoring process, an important advantage if compared to other analytical frameworks and concepts. Last but not least, using the international anchoring framework to analyse the international influence on the democratisation process allows us to make a hypothesis concerning the type of democracy consolidated. It is possible, in line with Morlino's argument about the domestic anchors' effect on the type of democracy established, to hypothesize that the quality of the democracy consolidated through the process of the international anchoring is going to be influenced by the mechanisms that linked the domestic and international actors.

The process of international anchoring is also linked to another important process that Morlino and Magen labelled "boundary removal":

> "When we look at the experience of those Central and Eastern European Countries involved in the pre-accession process, a key feature of the process appears to be the effective removal of boundaries of the nation states involved (physical boundaries, economic, institutional, political-cultural). This phenomenon involves not only the en bloc acceptance and internalization of EU laws and standards in their entirety (its acquis), but a commitment to harmonize the country's domestic and even foreign policy behavior with that of the EU, in the future as well. The process of boundary removal entails extensive limitation (containment of national sovereignty)… The process does not entail the mere "removal of boundaries" (as it occurs when a country is invaded and its territory incorporated into another political entity), but is fundamentally "constructive" –

> there is a simultaneous process of removal of "old" national rules and institutions, with "new" community rules and institutions" (Morlino and Magen, 2004, p. 11).

The relationship between the anchoring and boundary removal is so close that the second can be considered an effect of the first. The process of the boundary removal, which in some cases remains on the level of the creation of the political, security, economic, geo-strategic, military linkage between the nation state and international level, while in others it might even include the full integration into a supranational entity such as the European Union, represents a key for understanding both the process of anchoring and the possible crisis. As Morlino (1998) stressed, each anchor bears the seeds of its own destruction, and the same is true for the international anchors of democracy. Some of the seeds for the destruction of the international anchor can be found in the process of the boundary removal and in its dual nature.

The dual nature of the process of the boundary removal, like all international treaties, derives from the fact that while on one side it grants the participants access to some rights, privileges or resources, at the same time it requires the limitation of the sovereignty. Any binding international agreement or treaty, representing the *commitment* to act in a certain manner, might be seen as the loss of a portion of sovereignty, as a sort of "integration". The creation of supranational rules (be they bilateral treaties concerning only one specific area of policy, or the development of "state-like" actors such as the EU) represents the creation of the supranational authority to which the nation states decide to subordinate their sovereignty in the particular matter. We can conceive it as a change of the "polity" subject to the decisions in a certain field of policy, or, to put it in Easton's terms (1957), a change in "*political community*". Such redefinition of the political community is taking place on both the nation state level (the decision to adhere to a treaty and be a part of a larger community) and on the supranational level (the new member enlarges the boundaries of the supranational political community), which induces us to take into consideration the costs of the linkage on both the domestic and on the international level.

This redefinition of the political community through the boundary removal and creation of the linkages between the national and supranational level is producing benefits, but it might also bring costs to the national elite, or to other actors of the domestic system. As such, while it bears the potential to exercise the anchoring effect whenever the linkage is "enriched" with the democracy promotion, at the same time the costs it can produce, especially if added to the

costs deriving from the democratisation, might become the source of the crisis and reverse the process into de-anchoring.

2.2. How does the International Anchoring Work?

The process of creation (and dismantling) the international anchor implies, as we saw, the national state, target of the process of democracy promotion and supranational actor, engaged in the democracy promotion through integration. We excluded the cases where another *national state* is engaging in the democracy promotion from the model, as the short-term bilateral relationships are hardly capable of becoming the "institution entailing organizational elements and vested interests"[46].

We can describe a process of international anchoring by starting from a point in time when the domestic elite, for some reason, expresses the preference to strengthen the links or to become part of a certain supranational organization. The incentives and origins of such preference can be many: the normative pressures deriving from the international environment or the internal pressures, the attractiveness of the benefits the supranational organization offers to its members, the incentives and pressures produced by IA to conduce the national state to adhere. The incentives to adhere might be different, and we will face the issue when discussing the strategies of influence, as well as when discussing the factors concerning the domestic and supply side. What matters is that there is an incentive for the domestic elite to pursue the creation of the linkage with the international actor in the form of integration or establishment of the contractual relations.

On the supranational level, there are some norms and rules that the members shall comply with. Such norms might concern different fields of policy. If some of these norms concern the internal political regime, we can speak of international anchoring. For clarity purposes, we will refer to such norms with the label "democratization package", distinguishing it from the norms that do not concern the internal political regime and that we will label as "integration package". When compared to the existing domestic rules, the norms in the "democratization package" can have different levels of misfit. In some cases these norms are almost identical to the domestic norms, resulting in almost no change (the external actor is not performing a

[46] See Whitehead, 1986.

regime-anchoring function[47]). In other cases these norms might even influence the internal distribution of powers and the distribution of authorities. If that happens, the domestic elite might start to evaluate their preference concerning the integration. They evaluate the incentives to integrate (deriving from the organization itself or from the adjunctive incentives offered by the supranational elite), compare them with the costs of compliance with the regime-related norms, which would then produce a feedback on the whole process in the shape of the further integration going on or not, new incentives being produced or not.

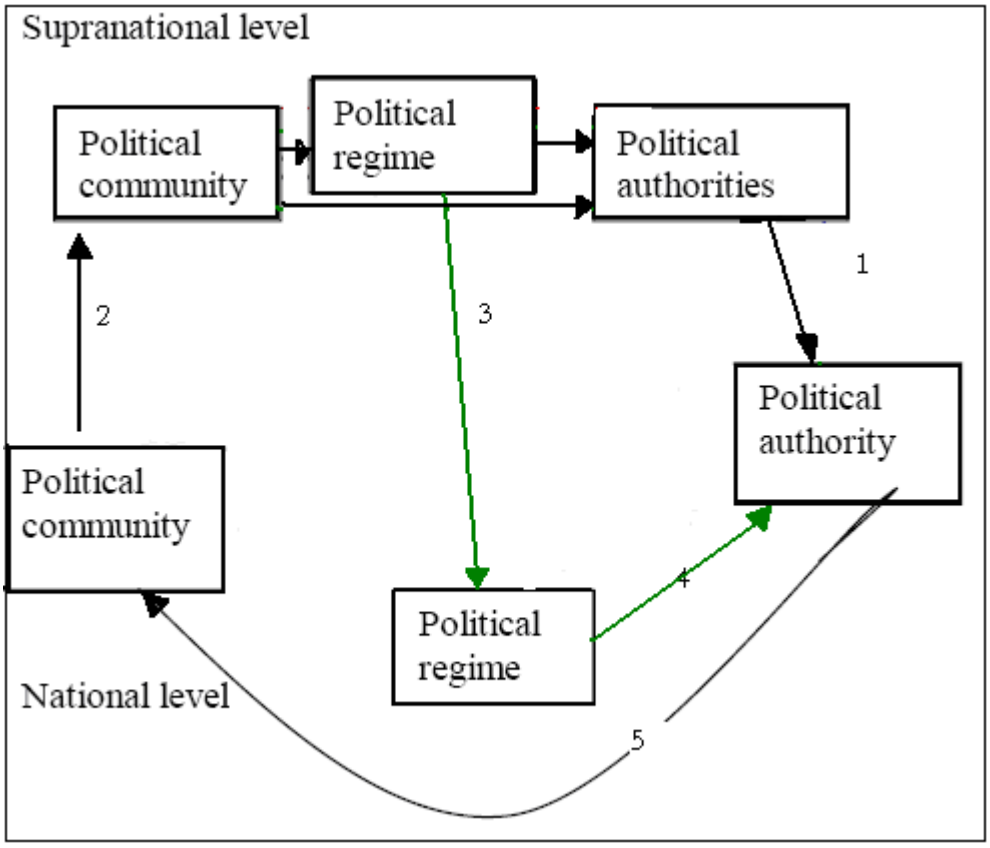
The process is presented and described in Figure 3. It appears to be quite mechanical as its only purpose is to illustrate the process' skeleton, while the detailed hypothesis and factors would be subsequently developed.

Until now, the model is almost identical to the EUCLIDA, and describes the process of the EU anchoring of the domestic political regime. But what will happen if we do not make any assumptions on the supply side?

The decision to redefine the political community concerns not only the national target state, but also the supranational organization. In the moment of the Eastern Enlargement, both the political community and the identity of the European Unity underwent one of the greatest and most important changes. It also had consequences on the distribution of powers within the Union and on its political authorities, and produced the incentive for a change in the political regime of the Union. This opens a number of questions on the incentives and interests that guide the supranational actor. Why did Romania and Bulgaria enter the Union, while Turkey still appears far away? What is the recently added clause on the "EU's capacity to absorb the new members"? Why aren't the countries of the EU Neighbouring policy (some of them geographically in Europe) offered a perspective of membership? Besides, why are the Balkans given a chance, and a very intensive process of rule promotion is going on? What would the consequences on the identity, regime, and the authority of EU be after integrating Turkey?

[47] Consider, for example, the entrance of already established democracies, such as UK, in the EU (at time EC). The UK's political regime was in line with the democratic norms required by the EU for granting the membership.

Figure 3: "The international anchoring of democracy".



Explanation: The supranational political authority, through its actions, produces the incentives on the national political authorities (line 1), in order to push them to "ask for" the redefinition of the national political community and its integration into the international political community (line 2). Adherence to the supranational community (line 2) implies the acceptance of the supranational norms and rules (in other words, the acceptance of the supranational political regime).

In the case of the international anchoring, the supranational political regime also contains, among others, the norms and rules concerning the domestic political regime. If there is a misfit between the domestic norms and promoted norms, the acceptance of these norms produces a change in the national political regime (line 3). The change of the domestic political regime can influence the domestic elite and the distribution of power (political authorities – line 4), becoming part of the cost-benefits calculations that decide the authorities' preference over further integration (line 5).

The green lines represent the influence on the domestic political regime (democracy promotion), the black lines represent the integration process. Only the two, when combined, make the process of international anchoring of the domestic political regime.

The changes that the supranational organization is subject to as a consequence of integrating the new members induce us to introduce the concept of the cost-benefits balance *also* on the supranational level and to question the influence the process' feedback has on the incentives of the international actor. For this reason we add in Figure 3 the lines connecting the political community, political regime and political authority on the supranational level as well, closing the circle of the international anchoring.

For our analysis of democratisation, the crucial question is for what reason and in which measure the supranational actor is interested in the democratisation of the target state. These incentives can change over time, together with the change of the incentives for the integration. The preferences of both supranational and domestic actors can change, and this produces consequences on the course of the entire process.

We will illustrate this by following a hypothetical example:

Imagine that a certain supranational organization is strongly interested in the democratisation of a certain state in the region due to its security concerns. The domestic authoritarian (or "semi authoritarian") elite is attracted by the supranational actor's economic, political, military advantages (the outcomes of the supranational system), and/or by other incentives offered by the international actor. Let us also assume that the incentives offered by the IA are strong enough to compensate for the elite's costs deriving from the compliance (the international actor *pressing* for democratisation by offering material/social incentives is not a new concept in literature). As time elapses, and the transition and even some consolidation take place, the international actor's goal (security) can be reached and the original incentive for the further integration of the state can cease to exist (or it might change: for example, the discourse that was used to promote the integration in the first period now represents the commitment that it is difficult not to respect). On the national level, the incentives for integration might also change: as the transition takes place, the newly-introduced democratic regime creates a new elite whose stability and power in the possibly unstable political environment depends on the rules supported by the supranational actor and the membership in the supranational organization. They seek to lock the democratic reforms undertaken in, linking the fragile domestic regime to the international level, a step often important for both their domestic credibility and for their credibility to the eyes of possible international partners.[48] In this case, what was perceived at the beginning as a cost of integration (the

[48] On the incentives the newly-born democracies have for locking the reforms in by adhering to the international organizations promoting democracy, see Mansfield and Pevehouse, 2006, pp. 140 – 142.

consequence on the political regime and political authority), now becomes a benefit (maintenance of the democratic political regime and authority). Pevehouse envisaged the possibility that the domestic actors decide to adhere to democratic IO in order to preserve and consolidate the newly established, fragile democracies (Pevehouse, 2002).

Finally, when full consolidation is achieved and the pressures towards authoritarianism extinguished, the domestic democratic elite does not have to account for the international guarantees of their power, as their position is fully legitimized, and again, the necessary incentives for the following integration might change again.

The three moments described above are critical for the process, as the change of the structures of incentives might directly influence the efficiency of the strategies in place. Moreover, the phases of the change of domestic actors incentives correspond to the phases of democratisation: the first phase is the one prior to the instauration of the full democratic regime (transition), the second one concerns the period of consolidation, while the third phase, in which the external actor is not crucial for the regime's stability, corresponds to the moment of the achieved consolidated democracy.

Until this point, for illustrative reasons we used a simplified vision of all the crucial elements involved in the process. We assumed one single supranational actor, having one system of preferences, a target state was also conceived as the unitary actor, and the promoted regime was conceived as "one package of norms". We chose to use this mechanical and abstract presentation in order to illustrate and clarify the concept of international anchoring. In the following paragraphs we will discard each of these simplifying assumptions and examine the crucial elements of the process. We will sum the factors on the supranational level up in three groups: international actors' interest, international actors' capacities, and international actor's approach. *Interests* and *priorities* of the actor involved in the process of democracy promotion are, as we will see and as Whitehead already taught us, an important factor determining the actions of the international actor. The *capacity* of the actor (resources and institutional capacity), would influence the choice of strategies and the efficiency of the outcome. Finally, the *approach* of the international actor consists of two "subgroups" of variables: on the one hand we have the particular *content* of the norms the actor decides to promote. How does the IA define democracy and what does it promote? On the other we have the strategies an actor has at disposal. How does the actor promote the norms?

2.3. International Actor's Interest and Priorities

Each supranational organization is based on some kind of values and is made with some specific goal in the mind of its creators. At its very birth, the organization usually does not have any international reputation or authority to make the membership attractive merely on the grounds of its prestige. The first members are guided by the interests, the purpose they see in the organization. In the language of the theory of organizations, the organization (in our case the supranational one) is created with some *purpose*. Such purpose is linked with the interest the foundation members seek through their adherence to the newly emerging organization, be it military, economic or political. This original goal of the organization is important to bear in mind but, as we saw in the example of the EU, as time passes, the organizations take a life of their own, and the interests might change, re-define, develop and become richer. Both the inside factors (in this case the member states) and the environmental factors can produce the change. For example, while the European common agriculture policy was created due to *internal* incentives, the European foreign and security policy was significantly influenced by the Balkan wars and later by terrorism, both factors deriving from the environment.

The system of preferences of the organization, as well as the system of preferences of its members – which might diverge – can influence the process of democracy promotion (see Whitehead, 1996). When we talk about the process of the international anchoring of democracy, we shall examine two particular motivations: the interests that push the organization to accept new members (where do the incentives to integrate and to enlarge come from?) and the interests in democratizing the target country. The two will be strongly influenced by the particularities of the target state: not all countries are equally welcome, which means that we should examine both the organization's *general* set of interest, and its interests in a particular region or state.

Why does an organization decide to accept new members? In function of the political regime of the supranational organizations, the process of enlargement might bear the consequences on the internal distribution of power. It can influence the distribution of power between the different institutions of the supranational system, as well as the distribution of power between the member states. We shall thus wonder *why* to enlarge? In the process of

international anchoring, the integration itself can be a goal, or it can be perceived as a price to pay in order to democratize a particular state.

If integration is a goal itself (due to the symbolic, military, economic, geopolitical interests of the supranational organization or of its members), we can expect that the accent the supranational actor puts on the democracy promotion might be weaker. When democracy promotion takes place in such context, we can hypothesize that the IA would be keen to use "softer" measures and indicators when assessing the compliance with the democratic norms. In other words, whenever the interest to integrate and democratize are in conflict, the integration will be given precedence over the democratization[49]. The possible conflict of interests between the different institutions and levels composing the supranational system would only further complicate and undermine the process by imprinting, as we will see later, on the determinacy and credibility of the IA's action.

Another situation is when the integration is used as a reward for complying with the democratic norms promoted by the IA, whose main interest is to spread democracy. In this case, it is particularly interesting to understand the values, concepts and interests that lie behind the democracy promotion. When democracy is conceived as a *mean* for other goals (like an instrument of security and/or economic policy), the IA's action might be compromised and might switch to tolerate even the undemocratic elite, if the ultimate goals are at stake. On the other hand, where democracy is promoted for the sake of the democratic values, the credibility of both conditionality and socialization is higher.

As we previously underlined, the interests and preferences might change and in some cases this change represents a crucial point in the process of the anchoring of democracy. We shall be particularly careful to identify these changes and their impact on both the promotion of the democracy and integration process.

2.4. International Actor's Capacity

The capacity to promote the norms, to put pressure onto the future members, to enforce the decisions and to monitor the implementation all are crucial factors determining the outcome of the international actor's activities. The intention to undertake an action, if not completed with the ability to act, is meaningless. The supranational organization's capacity is a

[49] As Whitehead stressed, not all good things come together.

product of its characteristics and resources. We can distinguish between the material resources, the social and normative resources, the organizational resources and the "network" resources.

The material resources are linked to the type of organization and part of the material resources comes from the "goods" and "benefits" the organization produces for its members. The goods the organization produces represent a resource the organization can use to support the compliance, and, as such, they influence the number and kind of incentives the organization can offer.

As we will see in the section dealing with the strategies, different strategies are linked to the different *types* of incentives used. In line with the distinction between the social and material incentives, we can distinguish between the organizations based on material goals vs. organization embracing *also* symbolic values. The organization's capacity to successfully use a particular mechanism of influence would depend on the incentives it can produce[50].

The material values (security, richness, preferential agreements, cooperation in a particular area policy) are connected with the policy areas in which the supranational actor has competencies. We can distinguish between the supranational systems with a large number of integration "areas", and those where boundary removal tackles only one or few areas of policy. The areas of policy the supranational organization covers represent the *goal* of the integration: the larger the number of policy fields, the larger the goal of the integration. The larger the goal of the integration, the more different goods the organization produces for the members (but, at the same time, the "larger" the potentially perceived loss of sovereignty). The substantial difference between the EU, whose competencies cover numerous areas of policy, and NATO lies, among other, also in the number of policy areas they cover. These areas are a potential resource of both benefits and costs, and it will be the empirical research to establish how different the domestic actors perceive these dimensions.

The social and symbolic values of the organization give the possibility to exercise normative pressures or to engage in the process of the social learning. The social and symbolic values of

[50] Thus, Mattina (2004) underlines that it was precisely an incapacity of the EU to create a single European foreign and security policy that pushed Europe to follow the "democratization through expansion strategies" and to develop foreign politics grounded on aid and economic cooperation as instruments to follow the political goals. Mattina stresses: "La scelta di adottare le politiche di aiuto e cooperazione economica ai fini politici nasce dal fatto che l'UE è un'organizzazione sopranazionale con un potere centrale poco coeso, dotato di potestà limitata, e praticamente privo di mezzi di offesa e dissuasione; perciò strutturalmente incapace di divenire, anche in un futuro lontano, una potenza militare paragonabile a quella degli Stati Uniti. Per tali ragioni l'UE è interessata a sviluppare un sistema internazionale autoregolato da leggi e norme che ne consentono il pacifico sviluppo attraverso la cooperazione transnazionale". Mattina, 2004, p. 315.

the organization depend on the values upon which the organization is based, on the authority and prominence of its members and on the reputation of the organization and its members. The UN membership, for example, is a symbol of the state's sovereignty and independence, which made the "seat of UN" one of the most often underlined requests of the newly born states. The EU became a symbol of democratic values, tolerance, diversity, human rights, while the G8 or a permanent membership in the UN Security Council are the symbols of the state's power. The *identity* of the supranational group, as well as the significance the target state is associating with the supranational group, represents an important factor for both the democracy-promotion capacity of the institution, and for the strength of the attractiveness it represents for the specific target state. We will see in the section on socialization how the "desire to be a part of a good standing group" can force the states to comply with the necessary requests to be recognized as a group member.

Another important issue to include in the analysis concerns the components of the international organization. Which countries form the organization, what are their characteristics, political regime, international authority, economic and military potentials?

All these factors influence the reputation of the organization, and can influence the credibility of its action. The geographical position of the member states (concentrated in a region or spread all over the world) is also an important characteristic, as the studies showed the particular advantage of the regional organizations in the norm promotion. Pevehouse expressed this point and even used it to exclude the global international organization from the analysis. The theoretical ground for such decision was that *size matters:* according to the author,

> " …Because regional IOs tend to operate with small numbers and higher levels of interaction than global organizations, causal processes such as socialization, binding, monitoring and enforcement are more likely. Moreover, the regional IOs are more likely to possess the leverage to press the member states to democratize as the vast majority of economic and military agreements are made under the auspices of, or to create, international organizations. " (Pevehouse, 2002, p. 520).

The political regime and the distribution of the authorities on the supranational level, both official and empirical, are also an important issue to tackle. For example, if the norm is to be promoted through the socialization mechanisms, the very promotion of the norm shall be considered legitimate. It is difficult to imagine how an organization ruled by de-iure or de-facto undemocratic practices could be perceived as legitimate when promoting democratic norms. Again, if the organization is dominated by one (or few) powers, there is a risk that it might be conceived as an "instrument" in the power states' hands (an example can be NATO that is believed to be dominated by USA and USA's interests).

The level of the organization of the supranational system is also relevant. Is it only a forum of the leaders, the international treaty, or does it have a structure, developed institutions, and organigram? How much are these structures developed? How independent are they? In which measure are they institutionalized and entrenched in their own interests? What is the distribution of power between the supranational level and its member states? Does the supranational bodies have the decision-making power? How are their decisions implemented? Are there any mechanisms developed for monitoring the compliance? Is there a well-developed institutional administrative capacity on the supranational level necessary for the enforcement of its decisions and monitoring of the compliance? As we saw, all these questions become important as they might influence the determinacy of the conditionality.

The conditions for membership and expulsion can also influence the IA's potential for democracy promotion. Reiter (2001) observed how NATO, not having the possibility to exclude from its lines the members that overthrow, or switch away from democracy, is not capable to make its conditionality credible. On the other hand, organizations such as the EU, Organization of American States, Mercosur (Southern Cone Common Market), all contain a clause which allows the imposition of sanctions, suspension from participation or suspension of benefits in case the members do not comply with the democratic criteria established by the organization.

The procedure of adherence and possible expulsion are meaningful information to take in consideration when analyzing the credibility of both the threat and the reward. Who decides if a state is to be accepted as a member or not? Is the decision brought by the supranational bodies, or can the member states veto the process? If the member states can veto the process, which actors are exercising this power, the ruling elite or the electorate? The referendum requirements some countries have when it comes to the *change* of international treaties can raise concerns about the credibility of the reward[51].

Finally, the level of linkage between the organization and other supranational organizations, through both the shared members and the cooperation, might also be an important factor in contributing to raise the organization's power and to increase its leverage on the target state. The existence of the linkage between the Council of Europe, EU and OSCE means that the coordinated action between these actors can increase the conditionality potentials of each of them. The state preference to adhere to *one* of them can open the door to the influence of all

[51] Here we can recall the 2001 referendum in Ireland, when the voters refused the Nice treaty, bringing thus in question also the enlargement to Eastern Europe.

others. As the analysis of the EU documents showed, the EU often uses its authority to condition the integration process with respect for other international norms, and particularly the respect for the various *European* supranational organizations norms.

2.5. International Actor's Approach

With the term *approach* we understand both the *content* and the *strategies* implied in the process of the democracy promotion. The argument is that both *what* norms are promoted and *how, through which channels of influence* these norms are promoted, might have an important impact on the success of the democracy promotion. The actor promoting democracy assumes the existence of a certain link between the promoted norms and the outcomes expected, and, on the basis of such assumptions and on understanding of the domestic politics, the IA creates beliefs on what are the best practices to follow in the specific case. For example, we can observe how, from the international NGOs, such as human rights watch, to the nation states like USA, there is the diffused belief that the very first step to undertake in promoting democracy is the promotion of free elections establishing the electoral democracy, active civil society and freedom of speech. Yet, as Snyder convincingly argued, this widely accepted recipe for democracy (elections, freedom of speech and active civil society) in the context of weak democratic institutions, often brings to the nationalist appeals and to all obstacles to the democratization the nationalism and possible nationalist conflict might bring to (see Snyder, 2000, p. 40).

The content of the rules promoted can also vary within the template of the particular international organization that defines the specific, target-tailored content of the rule promotion. Schimmelfennig, Engert and Knobel (2005) find out that the EU approaches to the minority rights significantly varied between the candidate countries (particularly in the case of Slovakia and Latvia). Finally, it can even vary with time, similarly to Kelly's "learning by doing" concept, where the international actor, after observing the impact produced by the promotion of the specific norm in time T_0, adjusts the content of the rule promoted in time T_1.

The above examples and observations serve to illustrate how even the most widely accepted beliefs about democratization (importance of the free elections) are not always the best practice to follow, bringing the causal beliefs upon which the IA is basing its

recommendations to the centre of the attention. Being so, we can hypothesize that the content of the promoted norms influences the exit of the democracy promotion and that the failure to democratize might be a product of the inadequate content of the promoted norms. The understanding of what democracy is, which level of democracy we are aspiring to, how to reach a certain level of democracy quality and how to measure it, all are questions that in absence of a single, widely accepted answer, can significantly influence the process of democracy promotion. We therefore prefer to include the *content of the promoted norms* among the independent variables, and in this manner to adopt an approach according to which more than one type of democracy exist, and the very content of the definition given to democracy can influence the exit of the process.

As far as the *strategies of influence* are concerned, here we refer to the different strategies of the democracy promotion the enlargement, Europeanization, and democracy promotion literature explored. The international actor might decide to influence the decision of the ruling elite through the conditionality, by offering material rewards or "punishments" to change the costs and benefits calculations of the domestic actors, or it might try to influence the domestic distribution of power by supporting one actor against the others in order to strengthen the pro-democratic forces or even to bring to a change of the ruling elite. It might use the social influence in order to achieve "the pro-norm behaviour through the distribution of social rewards and punishments" (Flockhart, 2005, p. 97), or it might use the international forums and networks as favourable settings for the social learning and persuasion in order to achieve the change of identities and preferences. These four channels of action significantly differ in the resources they are based on, in the mechanisms they use, in the conditions influencing their efficiency and, it is possible to hypothesize, in the outcomes they produce. The decision to use one mechanisms of influence rather than another, and to use one resource in the process rather than another, is another dimension of the IA's particular approach that is important for understanding the exit.

2.5.1. The Channels of Influence

In order to analyze the manners in which the IA can influence the domestic politics we identify four different strategies the international actors might use in order to press the domestic elite to comply with the supranational norms: conditionality, social influence, social learning and influence on the domestic distribution of power. Each of these channels of influence intervenes with the domestic arena, producing, under the specific conditions and in

a specific manner, the incentives that might influence the domestic actors' choices and bring to the compliance. Functioning through different mechanisms and relying on different relations of power, these strategies produce different effects on the domestic arena.

The effects of these strategies are strictly linked with the conflictuality deriving from the power-relations that are at the basis of a particular channel of influence. With the term "level of conflictuality", we refer to the probability that a particular action ends up with conflict between the domestic actors and the IA. The point becomes much clearer if we think of the differences between persuading and threatening a particular actor in order to achieve compliance. While persuasion and argumentation will not produce a conflict between the IA and the targeted domestic actors, the threat might bring to such exit. The conflictuality linked to the particular strategy, however, does not necessarily mean that the conflict between the domestic and the International Actor will emerge. It refers to the type and the level of conflict that *might* emerge, and on the reactions of the domestic actors. When analyzing the conditionality strategy, Grabbe (2001) underlined, for example, that withdrawing the promised reward bears significant risks, as the national government may not respond by improving the compliance, but by blaming the IA for unfair discrimination and appealing to the national pride. As Newton taught us, an action is always paired with reaction, and the level of conflictuality refers to the probability of the reaction that would harm the relations between the IA and the particular domestic actors.

Acting through different mechanisms, the different channels of influence produce a different kind of compliance. On the basis of the impact that the IA's action produces on the domestic actor's preferences, we can distinguish between two types of compliance. The first, that we will label "consensual compliance", refers to the situation where the compliance is a product of the interiorization of the norm. As the norm is internalized, there is no further need for the external intervention for ensuring the implementation, unless in the situation when the actor, willing to comply, does not have the necessary resources to do so. Another kind of compliance, qualitatively different, is the "controversial compliance". It is a situation when, due to the IA's action, the actor is complying with the norm he has not internalized and does not share. As the action of the IA brought to the compliance without a change in the target's preferences, the actors will have the incentives to, whenever possible, avoid the compliance. What can be expected is fake compliance (with compliance only on paper, not in the substance), partial compliance (compliance only with some aspects of the norm, other

aspects being neglected), or lack of implementation of the rules promoted. In such situation, only the subsequent IA's action, or the emergence, on the domestic level, of new actors capable to push the compliance forward can ensure that the norm is properly implemented even when the reward was already achieved[52].

In the sections to follow, we will examine the necessary conditions for each of these channels of influence to produce a positive result, together with the consideration of the level of conflictuality a particular strategy produces and the type of compliance we can expect.

2.5.1.1. Democratic Conditionality

The model of democratic conditionality is one of the most developed models of the externally driven rule promotion. It is grounded in the rationalist theory and in bargaining logic, both assuming that the actors involved are strategic utility maximizers, interested in the maximization of their own power and welfare. The external actor uses its supremacy and power deriving from its capability of providing economic aid, political support, security, access to resources etc. in order to condition the adoption and implementation of certain rules.

The literature distinguishes two *types* of conditionality. The first one is *reinforcement by reward* (reactive reinforcement in the terminology of Schimmelfennig, 2001), where the international actor grants the reward if the government complies with its requirements, and withholds the reward if it fails to comply (Schimmelfennig and Sedelmeir, 2004, p. 662). The reward may consist in economic aid, favourable trade arrangements, financial help, steps towards integration. The other possibility is to *intervene coercively* to change the cost-benefits assessment and behaviour of the target government by inflicting extra costs (reinforcement by punishment, see Schimmelfennig, Engert and Knobel, 2003, pp. 496-497; Schimmelfennig and Sedelmeir, 2004, pp. 663-664; on the costs of reinforcement by punishment, see Grabbe 2001, p. 1021).

The outcome is a result of the bargaining process between the external actor and the government, the attractiveness of the reward (both in terms of speed and size), the relative force of the actors involved, the credibility of the threat and domestic costs of compliance (for

[52] This distinction between consensual and controversial compliance is inspired by the distinction Stoppino (2001) made when speaking about the difference of "the will" between the two agents entering the relations of power. The author draws a distinction between those cases where the power exercised by A brings to a change in the preferences of B and the situation when the exercised power brings to compliance but not to the change of the original preferences.

specific hypotheses developed for each of these variables see Schimmelfennig and Sedelmeir 2004, p. 664). The determinacy (specificity) refers to the clarity and formality of the promoted rule, and is mainly influenced by the *content* of the promoted norms (see the next section). The higher the clarity and formality, the easier the monitoring of the implementation, and the clearer the standards towards which both the external actor and the government can measure the performance. High determinacy has informational, credibility and binding effect. It provides the target government with the road map for what precisely should be done, it increases the credibility of the threat as it narrows the scope for the interpretation and manipulation of the rule and increases the monitoring capacities. On another hand, it increases the credibility of the reward as it binds the international actor by removing the possibility for the unjust claim that the conditions have not been fulfilled (see Schimmelfennig and Sedelmeir, 2004, p. 664).

Attractiveness of the reward is another source of variation under a strategy of reinforcement by reward. It is usually hypothesized that the shorter the temporal distance and the higher the reward, the higher shall the incentive for compliance be[53]. In the case of the international anchoring, the highest award the international actor can offer is the full membership, but it is also the one requiring long-term dedicated actors. Some supranational systems, like EU, developed different steps and "checkpoints" in the integration process, where a series of funds and arrangements "open up" as the country advances on its road to full membership.

The credibility of conditionality refers to the costs and the credibility of the external actor in withholding and granting the reward. The superior bargaining power of the external actor can contribute both to make its threats credible and to offer certainty about the conditional payments. The bargaining power of the external actor in this dimension is a tricky variable, sometimes creating centripetal forces: in other words, the incapacity of the external actor to withhold the reward without suffering important costs decreases the credibility of the threat, but increases the credibility of the reward.

Moreover, the credibility is also influenced by the consistency of the organization's allocation of rewards and strongly dependent on the IA's interests in democratizing and/or integrating the target state. "If the EU were perceived to subordinate conditionality to other political, strategic, or economic considerations, the target states might either hope to receive the benefits without fulfilling the conditions or conclude that it will not receive the rewards at

[53] See Morlino and Magen, 2008, Schimmelfennig and Sedelmeier 2005.

any rate. In both cases, the target state will fail to adopt the EU rules" (Schimmelfennig and Sedelmeir, 2004, p. 666). As we included the interests of the IA in the model as one of the independent variables, particular attention should be paid in order to distinguish the cases where the domestic actors believe that the reward can be achieved without compliance from those cases where, due to the IA's interests, the conditionality linked with the democratization is weaker. In the first case, we speak about the hampered credibility of the conditionality due to the target state's perception of the IA's priorities. In the second, we have weaker conditionality (in terms of the size of the reward), which is a product of the IA's voluntary decision to associate the reward with compliance to the issues that do not concern the democratization process.

Schimmelfennig and Sedelmeir consider the "presence/absence of a credible alternative source offering comparable benefits at lower adjustment costs" (Schimmelfennig and Sedelmeir, 2004, pp. 665-666) as another important issue that influences the credibility. Actually, the presence of alternatives does not directly influence the credibility, but the domestic actor's perception of the reward's size, and, as such, the presence of alternatives, is included in the EUCLIDA model as the factor on domestic level (see the section on the EUCLIDA above).

The last set of variables usually included in the models of democratic conditionality concerns the adoption costs and the number of veto players. The adoption costs concern the distance of the norm promoted from the domestic status quo. Where there is a greater cultural mismatch, the distance from the domestic status quo to the externally promoted rule is greater, which increases the costs of compliance[54]. As this factor is tightly linked to the content of the promoted norms, we will consider its impact in the next section. Similarly, the preferences and relative power of the veto players that might obstruct the democratization, the process of boundary removal or both,[55] is a domestic factor already included among the independent variables of the EUCLIDA model.

What impact and what level of compliance can we expect in those cases where the norm is promoted through the conditionality channel?

The conditionality, as a strategy of influence, implies a certain level of conflictuality, which varies from high to low as we pass from the conditionality through reward to the

[54] See Schimmelfennig and Sedelmeir, 2004 pp. 666 – 667; Morlino and Magen, 2008, on the misfit see also Borzel and Risse, 2000.

[55] On the veto players see Tsebelis, 2002; on veto players in the democratic conditionality see Schimmelfennig and Sedelmeir 2004, on the importance of veto players in studies on europeanization see Borzel and Risse, 2000.

conditionality through threat. While in the case of threat, the level of the conflictuality that such strategy causes is so high that the threat is even rarely used by the international actors[56], the level of conflictuality of withdrawing the promised reward depends on the importance of the reward and on the domestic actor's perceptions on the legitimacy of such action. If the reward is not too important and/or if all domestic actors accept the blame for not respecting the deal, the withdrawal of the reward might not produce a conflict between the target state and the IA. But when the reward is crucial for the target state, when the domestic actors consider the IA's action illegitimate, or when, in order to avoid domestic criticisms, they have the possibility to delegitimize such IA's action, the level of the produced conflictuality is almost the same, if not even higher, as that produced by the conditionality through threat.

Besides risking to cause a conflict between the domestic and international actors, thus influencing the entire process of the international anchoring, the compliance that can be expected when this strategy is used is also ambiguous. As the conditionality acts upon the domestic actors' costs and benefits calculations without influencing their values, goals and preferences, the level of compliance will depend on the further structure of the costs and benefits for the stakeholders. Once the reward is achieved, the original, unchanged preferences of the domestic stakeholders might bring to the obstruction of the implementation, or even to the re-establishment of the previous practice. If the temporary compliance with the norm did not create new change agents on the domestic level, able to ensure further respect for the norm, the rule implementation will be seriously hampered and it will depend on whether or not the IA continues to exercise strong conditionality in order to ensure the implementation. The recent studies on the conditionality channel offer a series of empirical examples of such gap between the levels of compliance registered in the rule adoption layer and the compliance in the layer of rule implementation[57], between the normative framework and the practice on the grounds[58]. We then expect to register a controversial compliance in cases of norms promoted through the conditionality channel.

2.5.1.2. Socialization

While the mechanism of conditionality was at the centre of the international relation studies from its very origins (the realist turn in international relations can be dated back to

[56] See Grabbe, 2001; Schimmelfennig and Sedelmeir, 2004, 2005.
[57] See Morlino and Magen, 2008. See also Checkel, 2000.
[58] See Checkel, 2000.

Thucydides), the concept of socialization only recently gained its space, with the development of the constructivist approaches to the IR. The same is true for the literature on the democracy promotion where, due to the different influences coming from the IR, the europeanization[59] and public policy studies, the concept bears the mark of different uses and definitions prevailing in different disciplines and schools of thought.

As we will see, there are competitive definitions of the concept of socialization, reflecting the debate between the "normativists" (or "softer" constructivists) and "radical" constructivists.[60]

On the one hand, we have the school of thought known as "normativist" or "soft-constructivist", according to which the ideas matter as they *constrain* the behavior, and according to which the institutionalized norms limit the behaviour of those actors who are assumed to follow the logic of appropriateness (Checkel, 1997). In these studies, the actor's identity is external to the theoretical models, his ideas and preferences being exogenous variables. If we turn to the question made by Risse (2000) – "What is actually at stake in the constructivists/rationalists debate?" – the approach described enters the dialogue with realists by examining what is *the motor* of the behavior, the logic of appropriateness or the logic of consequence. We shall however observe how the two "logics" are not in fact mutually exclusive: it is possible to argue that those following the logic of appropriateness are acting in line with the logic of consequentiality with the only difference that in the calculus of the costs and interests the symbolic values are also included. The "polarity" between this school of constructivists and the rationalists becomes not the origin of the interests, as they are assumed to be given, but the "strength" of the material and non-material incentives. If we turn to the theories of power in order to understand the dynamics in the two mechanisms, we can notice how the two actually share a form of exercising power (reward or punishment), but differ in values that are at the basis of power and the arenas in which the power is exercised (see Laswell and Kaplan 1950).

[59] From the different meanings the europeanization might refer to, here we use it in line with Bulmer and Radaeli, who define europeanization as a "Processes of construction, diffusion and institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things', and shared beliefs and norms which are first defined and consolidated in the making of the EU public policy and politics and then incorporated into the logic of domestic discourse, identities, political structures, and public policies", and it refers to the EU effects on the member states.

[60] Thus Checkel (1997) distinguishes between constructivists and normativists (both studying the importance of the norms and identities), to pass, in 2001, to distinguish "two kinds" of constructivism and two directions of the constructivist research, ontologically rather different.

Another path of constructivism, according to Checkel the "radical constructivism", argues that the ideas *constitute* the behavior. Our identities, preferences and interests are not given but built and shaped by our values and ideas. This brings the actors' identities and preferences inside the model, and the main question of these researches is how the identities, preferences and ideas are shaped and changed, social learning being a key to understand the creation and change of the actor's preferences. The concepts of social learning and persuasion were previously developed in the literature on public policy, where the analytical models distinguishing between different types of ideas and conditions facilitating the social learning were created.[61]

In line with the distinction between the different "constructivists", we can find different meanings of the concept of "*socialization*" in literature:

- Socialization as a synonym for *social influence* and mechanisms where the ideas are a constraining behavior: in this group, we can find Finnemore and Sikkink (1998) who stress that the term "applies to the mechanisms that involve diplomatic *praise or censure*, bilateral or multilateral, reinforced by material sanctions and incentives". To refer to social learning, the two authors use the term "persuasion", where the difference between the two lies in the level of the interiorization of the rule.
- Socialization as a synonym for social learning and persuasion: this usage can be identified in the works of Pevehouse, where the author uses the term "socialization" when speaking about learning and persuasion through which the beliefs and identities are changed (Pevehouse, 2002). Similarly, in the literature developed in the public policy analysis, where the authors analyzing social learning use the term socialization as the "exposure to certain cultural environments that shape our ideas" (Haas 1992, 2004, Hall 1993, Sabatier 1999).
- Finally, beside these two more narrow usages, there is a tendency to use "socialization" as a wider term, referring both to persuasion (social learning) and to social influence (and the constraining mechanisms of the norms). Such use can be found in Flockhart (2005, 2006), Kelley, 2004 or Johnston (2001).

In this study we will use the term "socialization" in its wider meaning, including both the identified subtypes, conceiving it as a larger category characterized by the fact that it is based

[61] For a discussion on epistemological causes and implications of the constructivist's analysis, which considers only persuasion as a mechanism of socialization, see Johnston, 2001, p. 495.

on the norms, ideas, identities and culture, unlike the term "conditionality", which we will use to refer to the channels of influence based on the material bargaining. As Johnston (2001) underlined, even though the ideal of socialization consists in the internalization of the norm, yet:

> "there can be various degrees of internalisation, given that not all actors are always exposed to exactly the same configuration of social pressures. While pro-social behaviour may be ideal because of its appropriateness, at the opposite end of the spectrum there should be pro-social behaviour because of its material consequences (positive and negative). At this point, pro-social behaviour cannot be attributed to internalisation or socialization in pro-social norms of the group.
>
> But if the internalisation of pro-social values is the hallmark of socialization, and if the other end of the spectrum is behaviour motivated by the calculation of material costs and benefits, this leaves a vast amount of pro-social behaviour produced by neither process." (Johnston 2001, p. 495).

Johnston identifies two mechanisms of socialization: "persuasion" and "social influence". While persuasion and social learning are accepted forms of socialization, social influences are not always considered a technique of socialization. Understanding social influence as a form of socialization means understanding the socialization as a behaviour guided by the logic of appropriateness, as a pro-social behaviour, independently on the level of interiorization of the rule. As Johnston underlined, what makes social influence a kind of pro-social behaviour is the fact that the rewards and punishment (used in the process) are social. They are social because "only groups can provide them, and only groups whose approval an actor values will have this influence. Thus, social influence rests on the influenced actor having prior identification with a relevant reference group" (Johnston, 2001, p. 499). The socialization is a mechanism of influence where the group influences an actor; it is possible only in a group and it is an effect that the identification with a specific group is producing on the actor.

In line with Johnston (2001), Kelley (2004) and Flockhart (2005, 2006), within the category of socialization, we distinguish two "subtypes" of mechanisms. We will refer to the first one with the label "social learning", identifying it in the process under which the actor's ideas and preferences are changed. We label the second "social influence", identifying it with the mechanism through which the norms exercise a constraining effect on the actors.

2.5.1.2.1. Social Influence

With this term, we refer to the situations where the actors, guided by the logic of appropriateness, find themselves constrained by the norms and values.

> "Social influence elicits pro-norm behaviour through the distribution of social rewards and punishments" (Flockhart, 2005, p. 97)

> "… Rewards might include psychological well-being, status, a sense of belonging, and a sense of well-being derived from conformity with role expectations. Punishments might include shaming, shunning, exclusion, and demeaning, or dissonance derived from action inconsistent with role and identity. The effect of social influence is an actor's conformity with the position advocated by a group as a result of real or imagined group pressure. The difference between social influence processes and persuasion is neatly summarized by the phrase Festinger used to describe compliance due to social pressure: "public conformity without private acceptance" (cited in Booster, 1995; p. 96). Persuasion would entail public conformity with private acceptances." (Johnston, 2001, p. 499)

As we could see from these passages by Flockhart and Johnston, the main difference between social influence and persuasion concerns the stability of the actors' preferences. While in the case of persuasion the subject's preferences are *changed* as a consequence of learning and persuasion, in the case of the social influence the behaviour is modified, while identity and the actor's preference are not. In the case of the social influence the rule is not completely internalized, yet the actor complies even without material incentives.

In the case of the external promotion of democracy this means that the IA offers social incentives (in the shape of reward or criticism, back-patting or opprobrium) in order to force the compliance. It can be traced in the notes and reports issued by the IA where criticisms or appraisals are expressed, while their impact can be observed in the domestic reactions they caused.

Under which conditions is social influence efficient?

The first condition for the norm to constrain behavior is that a rule is accepted as a norm in the environment the target identifies himself with. The second necessary condition for this mechanism to take place is that the targeted actor is searching for this environment's legitimization (see Flockhart, 2005, Morlino and Magen, 2008). According to Finnemore and Sikkink (1998), the states comply with norms because they look for the international legitimacy, or they try to demonstrate that they adapted themselves to the social environment, that they "belong" to the group in which they identify themselves.

This brings us to the hypothesis about the factors influencing the outcome of the social influence strategies.

The first factor concerns the level of the norm's institutionalization on the supranational level and in this case the level of the diffusion of the norm, its acceptance and interiorization among the other members are decisive. If a promoted norm is widely respected in the member states, the target state would perceive it as an obligatory norm and the norm's

strength in constraining behaviour would be high[62]. Otherwise, it would be perceived as a simple rule that might even be broken, which would decrease the constraining effect of the norm.

Another factor on the supply side concerns the "promotion of the norm". If the supranational organization promotes the compliance with a certain norm in a manner considered legitimate, if there are no "double standards", if the monitoring of compliance is guided by precise criteria, the promotion of the norm would be considered legitimate and the compliance more probable (see Schimmelfennig and Sedelmeir, 2004).

On the "target side", an important factor is represented by the strength of the elite's and citizens' preferences to be a part of the particular supranational environment. This means that if the actors declare their devotion to the external norms, or declare their belonging to the environment, the norms of that particular organization become constraining. The measure in which these norms will constrain the national states will depend on:

- The level of the identification of the target state with the international environment in question, or the authority the international environment exercises in legitimizing the domestic regime. The identification of the state with a certain unity (elite and public opinion, or at least "declared" identification of the elite and public) would produce the impulse to "show that you belong" and would incentivize the state to comply (Finnemore and Sikkink, 1998; also Flockhart, 2005, 2006; Johnston, 2001).
- The level of misfit between the norm promoted and the internally diffused norms: if the promoted norm is in conflict with the domestically widely accepted values, it would be difficult to consider it legitimate and appropriate (Schimmelfennig and Sedelmeir 2004; Borzel and Risse, 2000).

Beside the cases where the actors consider themselves constrained by the norms without the external actors exercising any pressure (and they act according to what Weber called "anticipated reactions"), in this category we have also those cases where the international actors decide to condition the domestic elite with symbolic incentives in order to ensure compliance. It is a mechanism by which some kind of external accountability is put in place.

A study conducted by Schimmelfennig, Engert and Knobel (2003) found that the "conditionality through reward by the use of the social incentives" rarely brings to the compliance and that "back-patting" is rarely capable to motivate the domestic elite. The

[62] See Schimmelfennig and Sedelmeir, 2004, 2005.

authors underlined that the tactics of "appraisal" were functioning only in the cases of countries seeking the EU membership, but in these cases it was the membership conditionality to make them eager to comply. The exit of the "conditionality" through "appraisal" appears to be influenced by the strength with which the nation states are looking for the membership in a certain supranational organization.

Yet, before discrediting social influence as a possibly efficient strategy of democracy promotion, we shall examine if the social incentives are more efficient when used to *threaten* the actor's international reputation or legitimacy (here we remember the importance the démarche had in Maciar's Slovakia). The possibility that the efficiency of the symbolic incentives change as we pass from reward to threat comes from the particularity of the mechanism of social influence combining the symbolic values (status, psychological well being, sense of belonging, identification, legitimacy) with the reward and threat as form of the relation of power.

While not being directly correlated with the immediate material gain, the international status of the country is still considered to be a highly coercive and important dimension (see Gilpin, 1981). The status, legitimacy, identity are all symbolic values and as such are recognized in the theories of power as important "values", or "sources of power", the actors can use. As all other sources of power, the symbolic values are also potentially transferable into *other* sources of power (see Laswell and Kaplan, 1950). The scholars studying power relations taught us how resources can be used, exchanged and spent to gain *other* kinds of resources. And while the gain in status might not be immediately turned into material gain (Johnston 2001), and as such reward through social incentives is not so efficient (Schimmelfennig, Engert and Knobel, 2003), we can hypothesize that the *loss* of the previously enjoyed status might result in a significant loss of power the decision makers might fear.

For the external actors' disapproval to influence the internal actor's behavior by threatening it with opprobrium, it is necessary that the target actor seeks the international legitimacy. This link is illustrated in Serbia's example: while Milošević's regime was not constrained by the international community's disapproval, as Milošević was not seeking the international legitimization[63], in the case of the subsequent, so-called "democratic" elites, the vulnerability to such action is higher. The strength with which the external actors can use this strategy depends on the resources of the domestic actors' legitimacy. When the domestic elite bases its power on the devotion to the values including the promoted norm or the identity of the

[63] For this point see also Flockhart, 2006.

supranational community (deriving material benefits in terms of electoral support from the international status they enjoy, for example), their legitimacy can be easily undermined by their failure to pursue these proclaimed goals. Where the basis of their power is not linked to the symbolic values produced on an international level but on other sources, the international community disapproval would not influence their domestic legitimacy.

Beside influencing the international status of the particular state, the international actor's criticisms can also influence the status the ruling elite enjoys at home. This is particularly true when the promoted norms concern the democratic values and institutions. When the state (and in particular, the electorate) is aspiring to democracy, external criticisms which reveal the undemocratic nature of the political regime pose a serious problem for the political elite's legitimacy. By revealing the lack of compliance with the democratic norms, the international actor undermines the domestic basis of the government's legitimacy, inducing high costs to the ruling elite. For this reason the social influence as a strategy of democracy promotion is particularly relevant in the cases of hybrid regimes where the ruling elite adheres, at least on paper, to the democratic values. In such cases, the international actor's opprobrium, besides inducing the loss of the international status, can also bring to the loss of the domestic status for the ruling elite, causing high costs to the domestic elite. In these cases, particular attention should be paid to empirically distinguish the cases of compliance due to the domestic institutionalization of the norm from the compliance provoked by the international institutionalization of the norm. It is quite difficult to assess the international actors' contribution in promoting a specific norm in those cases where the domestic electorate was also pushing for compliance.

Under what conditions can we argue that it was due to the supranational environment's adherence to a certain norm and not due to the domestic pressures, or domestic pressures combined with supranational ones, that the target state decided to comply?

First of all, in line with Checkel's argument (2001), we should include the prevailing pattern of domestic decision-making process in the analysis. According to Checkel, the weaker the civil society and the lower the levels of vertical accountability, the weaker is the constraining effect of the norms promoted by the domestic society. In these cases, only the international actor can successfully exercise the social influence, while the impact of the domestic civil society is secondary.

The international factor is decisive also for the compliance with those norms not diffused in the domestic society or in conflict with the internally legitimated norms. In such situation, the compliance is mainly guided by the external factors, and the good response of the state to the societal incentives offered is a sign of the high constraining effect of the international norm in question. In these cases, the state accepts the norm only due to its desire to be accepted in the "good standing society".

Let us now turn to the level of compliance we can expect as the outcome of this strategy. The social influence brings to the compliance through opprobrium by changing, with the use of the social incentives, the domestic actor's costs and benefits calculations. As we already underlined, there is no full interiorization of the norm. As a consequence, the compliance achieved is the controversial compliance where the actor still maintains the original preferences. The main difference with the controversial compliance achieved through the conditionality resides in the fact that in the case of the social influence the actor is constrained, by his identity and the ideology he adheres to, to maintain at least an image of compliance with the norm he declares to share. In practice this means that further compliance will depend on whether or not the lack of compliance can be revealed to the public. When, due to the weak domestic society, lack of intra-institutional accountability and partial media freedom, the ruling elite is capable to mask the lack of full compliance with the norm, the outcome of these strategies in terms of the rule implementation will be unsatisfactory and linked to the external actor's capacity to further promote the compliance.

2.5.1.2.2. Social Learning

With the label social learning, we refer to a situation where training, persuasion and learning take place, bringing to a change in the actor's preferences, ideas and identities.

The process of social learning implies the absence of the perfect information. Often based on the studies in cognitive psychology, the developed models were concentrated in studying the cognitive and value systems of individuals and the conditions bringing to the change of the ideas.

One of the central factors influencing the exit of the social learning process concerns the content of the promoted norms. The promoted norms can be of different nature and can differently relate to the domestic actor's ideas and values, which influence the outcome of the persuasion. According to Hall (1993), Sabatier (1993) and Kuhn (1970), the ideas are divided

in those concerning the core values and ontological assumptions, and those more technical, concerning the secondary believes. Their models hypothesize that the learning conditions and influence differ as we pass from the issues concerning the "paradigm and deep-core beliefs" (the most abstract, and almost impossible to change according to these authors) to the "specific settings of instruments and secondary aspects" (the most specific and easiest to change ideas).

In the field of the international relations, Goldstein and Keohane (1993) distinguished between normative and cognitive ideas, a distinction similar to Weber's one between goals and means[64]. According to these authors, while social learning is possible in the realm of the cognitive ideas and the change of means can be achieved, the change of the values and of the goals determined by these values is almost impossible.

In the europeanization literature, this factor can be found under the label of "level of misfit", the concept embracing the distance between the domestically diffused values and the internationally promoted norm. The larger this misfit, the more the compliance is difficult. Borzell and Risse would argue that a certain (medium) level of misfit brings to the change and social learning, while in the cases of very large misfit the compliance is rather difficult.

As far as other conditions favouring the social learning are concerned, the constructivists' literature offers plenty of factors influencing the outcome. The persuasion is thus more successful:

- In those contexts where the actors do not have strong beliefs and preferences in the specific area. This situation is usually found when the persuaded one is in a new and uncertain environment, generated by the newness of the issue or by a crisis or serious policy failure, in which he is cognitively motivated to analyze the new information (Checkel, 2001). The less the actors are certain about the nature of the problem and about their own interests and preferences, the more they are likely to be open to persuasion and arguing.
- When the core values and beliefs of the persuaded one are coherent with the persuader's message (Checkel 2001, see also the literature on misfit, for more detailed hypotheses about the different levels of conflicts, see Sabatier and Jenkins Smith, 1993; Hall, 1993). If the argument could be made to resonate with some listener's previous attitudes or experiences and/or previously accepted norms and principles, the process

[64] See Weber, 1922.

of adopting the promoted norm would be easier. The consistency of the persuaded one's value system and promoted norms with the beliefs and values of the listener is an important element, as the norms inconsistent with the target actor's beliefs and values would imply a strong resistance to the argumentation and persuasion.

- When the persuader is an authoritative member of the in-group to which the persuaded one belongs or wants to belong, or when he enjoys the authority of being a professional in the field, when he can legitimately claim moral authority and knowledge and when he is perceived as a neutral actor, not pursuing the material benefits (Checkel, 1997, 2001; Finnemor and Sikkink, 1998; Sabatier, 1999; Ulbert, Risse and Muller, 2004). From this point of view, the IA's interests and priorities in promoting the external anchor are a meaningful element influencing his credibility when using persuasion as a channel of influence.
- The low level of politicization of the setting in which the persuasion takes place can also favour the learning process (Checkel, 2001). According to Sabatier (1999), the fora in which persuasion and learning are more probable are the professional fora rather than the open ones. According to the author, the social learning across belief systems is most likely when there is a forum which is prestigious enough to force professionals from different "advocacy coalitions" to participate and which is dominated by professional norms (See Jenkins Smith and Sabatier, 1993). The setting in which persuasion takes place and the existence of the epistemic communities and trans-national fora were also underlined by Haas (1992, 2004).
- The analytical tractability of the issue also influences the probability of successful persuasion. The process of social learning in a situation of conflict between the promoted norm and domestic norms is easier on those issues for which accepted quantitative data and theory exist. This means that the problems involving social and political systems are less conductive to policy-oriented learning than the natural systems (or technical details) (Jenkins Smith and Sabatier, 1993).
- The last factor to be included here is the consistency and coherence of the persuaded one's belief system and its consistency with reality. If the persuaded one's beliefs are incoherent and easily challengeable on the ground of internal incoherency of reasoning, or of low correspondence with reality, then learning would be facilitated as the "old beliefs" would be dismantled. (Sabatier, 1999)

Beside these factors, we should also account for the contribution of Borzel and Risse (2004) who added the presence of the domestic change agents and norm entrepreneurs engaged in the persuasion and advocacy as an important factor for the adoption of the external norms. While the presence of the change agents is included in the EUCLIDA revised model as an independent variable on the domestic level, their relation with the external actors is particularly relevant for understanding the impact of the social learning mechanism. Very often, the change agents active in the field were subject to the social learning strategy undertaken by the external actor who practically *forms* the domestic change agents that will further push the process of the rule promotion from within.

What level of compliance can be expected from the usage of the social learning strategy? Based on persuasion rather than on threat, with social or material incentives, this strategy produces no conflictuality as the targets are free to listen to the argumentation of the persuader or not. Further on, as the strategy consists in changing the target actor's preferences through the changes in his value system, identities and beliefs, in the case of the success of this tactic, there is a strong interiorization of the norm, resulting in the persuaded ones' sincere intention to fully comply. The compliance of the persuaded ones is "consensual", while the compliance on the state level can vary (from consensual to conflictive or no compliance at all) in function of the strength of the persuaded ones to influence the domestic course of policy.

2.5.1.3. Influence on the Domestic Distribution of Power

The influence on the domestic distribution of power is a rather under-theorized strategy in the field of studies on the external promotion of the democracy. Such lack of attention for this channel of influence is mainly caused by the rare usage of such strategy, mainly due to its costs and its high level of conflictuality. The students of the EU democracy promotion identified only few cases where such strategy was used: among those most often cited, we find Meciar's Slovakia and Milošević's Serbia, with some less specific references to Croatia, Romania, Bulgaria and Bosnia as well[65]. In these works the strategy was referred to under the label of "empowerment" (Vachudova, 2001), "domestic empowerment" (Schimmelfennig and Sedelmeier, 2004), "differential empowerment of domestic actors" (Schimmelfennig and Sedelmeier, 2005). Finally, in the literature on Europeanization we can find the "change in the domestic opportunity structure and interest constellation" as one of the mechanisms of

[65] See for example Schimmelfennig and Sedelmeier, 2004, 2005; Vachudova, 2001.

Europeanization (see Knill and Lehmkuhl, 2002). Even though there were different labels available for this channel of influence, we refused the label "empowerment" as it is limitative: the empowerment of some actors is only one shape of this strategy. Its other aspect consists in actions aiming to decrease the power of the specific actor. We then decided to label the strategy for what it actually represents: the influence over the distribution of power in the target-state's political arena.

What are the mechanisms behind this channel of influence, how can this strategy bring to compliance and how is it exercised?

The influence on the domestic distribution of power is based on a very simple logic: in order to ensure the compliance, the IA decides to bring to the power those actors that share the IA's agenda or that, for some reason, are more vulnerable to the IA's conditionality and social influence than other domestic actors.

As Schimmelfennig and Sedelmeier explain: in the case of differential empowerment,

> "Certain domestic actors have independent incentives to adopt EU rules, which might stem from the utility of EU rules in solving certain policy problems to the advantage of these domestic actors, or, more generally, in increasing their influence in the political system. However, in the previous domestic equilibrium, these actors did not have sufficient power to impose their preferred rules on the other domestic actors. Conditionality then changes the domestic opportunity structure in favour of these domestic actors and strengthens their bargaining power vis-à-vis their opponents in society and government" (Schimmelfennig and Sedelmeier, 2005, p. 11).

The two authors link the differential empowerment to the conditionality and consider it one *type* of the conditionality strategy, not recognizing that the two are actually significantly different in the mechanisms through which the compliance is achieved. Such position is mainly a product of the under-theorizing of the empowerment which, rather than an analytical category, appears to have the function of the ad-hoc explanation in order to account for a few rare cases.

Yet, the conditionality and the influence on the domestic distribution of power substantially differ. While the first targets the domestic actor's costs and benefits calculation trying to bring the change of the domestic actor's decision, the second tackles the actors and their power directly, in the most extreme cases trying to bring to a change in the ruling elite[66].

[66] According to Stoppino, we can distinguish between different strategies on the basis of the *object* that specific strategy aims to influence. From this point of view, the EU conditionality influences the actor's alternatives of behaviour, while the influence on the distribution of power influences the environment in which the actor operates. The mechanisms of the two strategies fully corresponds to the types of power identified by this author, with the difference concerning the labels used. Conditionality, as intended in the studies on the external promotion of democracy, corresponds to the categories "remuneration and constraint" (intended as reward and threat), while the influence on the distribution of power corresponds to Stoppino's category of conditionality, the term used by the author in order to underline that the change tackles the conditions under which the actor

While conditionality is a strategy that tackles only those actors to whom reward (or threat) was offered, the influence on the distribution of power is a strategy that tackles each single political actor, as power is the relational property[67] and the strengthening of one actor equals to the relative weakening of others.

The level of conflictuality produced by these two strategies also differ, and is much higher in the case of the influence on the distribution of power due to the losses suffered by some of the actors. Finally, the type of compliance also differs. If the strategy is successfully exercised, resulting in the rise to the power of the elite who shares the IA's agenda and who fully adheres to the promoted norms, the compliance is consensual, as the new ruling elite is fully internalizing the norms. A further IA's action is necessary only in order to ensure the maintenance of the new setting, while there is no need for further norm promotion actions.

Yet, achieving full success of this strategy is extremely difficult. First of all, the high level of conflictuality will cause the reaction of the actors who suffer the losses, who might try either to compete for the IA's support or to delegitimize the IA, or even to undertake severe actions against the domestic actors who enjoy the IA's support. Meciar's response consisted in using the nationalistic rhetorics to undermine the EU, Milošević's in undertaking measures of oppression against the domestic opposition and making the use of coercion more severe.

Secondly, by acting on the actor's environment, the change in the distribution of power might bring to unpredicted changes in the domestic actor's short-term preferences. This is particularly true when the IA's influence on the domestic distribution of power is directed against the opposition, aiming to ensure the permanence at the power of a specific group. In such asset, the ruling elite that extracts benefits from the IA's intervention might become interested in maintaining the status quo in order to keep drawing benefits.

Third, in order for this strategy to bring to the full compliance, it is necessary that the actors who got to the power thanks to the IA's intervention are fully devoted to the norms promoted by the IA, sharing its agenda and interests, a condition difficult to achieve in practice. More often, the result is the rise of the elite who most identifies with the IA and is most vulnerable to its influence, but whose political platform might be slightly divergent. In such asset, further IA's action (conditionality, social influence, persuasion etc) will be needed

operates. See Stoppino, 2001, pp. 133-161.

[67]For the concept of relational property and distinction between relational and dispositional properties, see Elgie, 1998.

in order to bring to the compliance, and the actors that lost their power due to the IA's influence might further obstruct the change.

Finally, as showed by Knill and Lehmkuhl, 2002, the direction of the domestic change achieved through this strategy (concurrency with IA's objectives or drifting away from the IA's objectives) is unpredictable and subject to the domestic factors. Such finding is in line with Stoppino's consideration of the difficulties to successfully predict the impact of this strategy in the complex social context. In these cases, the outcome can be easily reversed due to the strategies' indirect influence (it does not target the rule, but the decision makers who are supposed to adopt the rule) and due the numerous factors that intervene with the outcome[68].

2.5.2. The Content of the Promoted Regime

Another element of the IA's approach is the content of the norms/regime the IA is promoting. The question of the content of the norms promoted, even though apparently superfluous as it is clear that the analytical framework was designed in order to study the promotion of *democracy,* is an important question to tackle, seen that democracies are of many kinds. The credibility of the conditionality, as well as the process of social learning, are both favoured when the promoted norms are precisely operationalized and clear road maps are drawn. How an international actor defines democracy, which dimensions of democracy it decides to include among the promoted norms, as well as how it operationalizes the *concrete* meaning of these dimensions,[69] would depend on the practices and norms in the current member states, on the interests and on the causal beliefs of the international actor.

The level of democracy of the member states is an important factor influencing the content of the promoted norms. We can imagine that the lower the democracy standards of the existing member states, the weaker the definition of democracy the organization adopts and the weaker the potential of the organization for democracy promotion. The generally low quality of democracy among the member states means that the less democratic members would block the adoption of binding democratic norms. The level of the similarities between the political regimes and in the interpretation of the term democracy would further influence both the number and the content of the norms included in the set of supranational norms. This was one of Pevehouse's key factors when establishing which regional organizations are

[68] See Stoppino, 2001, pp. 143-145, 158-161.

[69] For example, operationalizing the particular dimensions of democracy means answering to questions such as: when is a judiciary really independent? When are the elections really free? We can see how the EU is promoting the New Public Management approach in the administrative reforms, and the bureaucratic model of judicial organization.

more likely in democracy promotion: "The more homogeneously democratic the regional IO, the more likely it will press the offending states." (Pevehouse, 2002 a, 2002 b).

The *content* of democracy that is promoted is a factor that significantly varies when we pass from one supranational actor to another. This factor can even vary across time: due to the process of the integration and to the access of new members, to some external factors and to the possible process of convergence of the old members, the definition of democracy the IA is promoting might even change. We can observe how democracy, as defined by EU when integrating Spain, Portugal and Greece, appears much less precise in comparison to the definition given to the same concept when approaching the Eastern Europe, which brings us to conclude that instead of *democracy* promotion we shall speak of the *particular type of democracy* promotion.

As the revised EUCLIDA model hypothesizes that the linking between democratization and integration offers the possibility for a cross-process compensation of the costs and benefits, beside the "democracy promotion package", we should include also the content of the "integration package" into the analysis. With the label "integration package", we refer to the norms promoted by the IA that do not concern the democratization process. The international organizations which are active in the several fields of policy might, beside the democratic norms and values, promote the norms in the field of the economic policy, foreign policy, security and military policy or any other dimension (from the environmental protection to the norms regulating the production of the goods). We can notice that while the membership in the Council of Europe is conditioned only by adhesion to the democratic values and respect for human rights, the membership in EU or NATO requires a compliance with a series of norms that do not concern the democratization process. Some of the norms promoted in the "integration package" are standard for all member states, some might concern a specific country[70]. The content of the "integration package", together with the IA's interests and actions in the boundary-removal process and the domestic developments (impact on the relevant domestic actors) caused by the integration, might create an important feedback on both international and domestic actors. If positive, such impact can contribute to positively change the domestic actor's costs and benefits balance and facilitate the democratization process. However, when the implications of the integrations process are negative, it can

[70] We can think about the EU's promotion of the compliance with the ICTY in Serbia, or the requirement made to Macedonia to solve the name dispute with Greece, or the recommendation made to the Balkan states to participate to the regional initiatives, all being political issues, but none directly concerning the democratization process.

influence the IA's interests and preferences, increase the costs of the domestic actors and intervene in the democratization process.

How does the content of the promoted norms influence the process of anchoring?

As the norm promotion takes place only where there is no similar norms on a domestic level, one of the most important factors of the content is the manner in which the promoted norm is related to the relevant domestic asset. The distance between the content of the promoted norms and the domestic rules in the particular field is known in literature as the level of "misfit" (Bulmer and Radaelli, 2005) and it represents the "adaptation pressure" (Borzel and Risse, 2000). As we saw when discussing the mechanisms, the exit of the democracy promotion strategies depends, among other, also on the level of the misfit, or, better say, on the distance from the domestic status quo (rationalists' logic) or its distance from the domestically diffused values (constructivists' logic). As the content of "the democratic package" and of the "boundary removal package" varies, the level of the misfit with the domestic institutions can also vary, significantly influencing the exit.

Besides analyzing the impact of the misfit and the possible re-distributive effects of the particular norm, we should also pay attention to the re-distributive effects of the democratization and integration processes and of the anchoring process in general. From this perspective, not only the content and impact of the single promoted norm, but also the manner in which the re-distributive effects of the different promoted norms are combined and the manner in which the overall costs and benefits are summarized can influence the process of anchoring. Sometimes even adding one single norm in the democratization or the boundary removal package can produce a significant shift of the costs and benefits for the domestic actors, influencing the entire process of the external anchoring.

Further on, the level of the specificity of the norm is also an important aspect of the content. When the promoted norm is more general and the countries are given the possibility to define by themselves the specific instruments that would bring to democratization, the problem of the misfit is less severe. On the other hand, when the norm is more general, the space for maneuvering the target states increases, which diminishes the credibility of the IA's action. This bring us to hypothesize that the precisely and well-defined content, while increasing the credibility of the international actor, at the same time, in case of large misfit between the national and supranational norm, also increases the *severity* of the misfit.

Not only the definition of the democracy adopted by the supranational organization, but also *the number* of dimensions this definition covers and the prescribed *timetable* can influence the process.

Starting from the definition the organization gives to democracy (a low-quality electoral democracy, or a fully-developed consolidated liberal democracy?), we shall also examine the *dimensions* of democracy the supranational actors are covering. We can imagine that different supranational organizations may cover different dimensions of democracy, some adopting a rich definition of democracy (to include not only political, but also civil and even social rights for example), while the others might promote only one or two dimensions. The compliance of the particular state with different dimensions and promoted norms might differ. In some areas it might be quite a smooth process, while in others it can face serious difficulties, as the level of misfit with the existing norms and the salience of a particular problem in the domestic politics differ as we pass from one area of policy to another.

Analyzing the criteria defining democracy as conceived and promoted by a supranational organization allows us to understand how come some actors are less efficient in democracy promotion. Do they use a one-size-fits-all approach, not being sensitive to the target state's particularities? Are important dimensions left out? Or maybe there are too many dimensions, so that the costs of the process are too high? We can also study how the different schedule of the norms promotion can influence the process: shall we first pursue the *difficult* issues, or begin with those more acceptable to domestic actors and then increase the pressure and requirements as the process evolves? Finally, we can also study the relation between the scope of integration we described as the number of policy areas the supranational system has authorities in and the goal of the democracy it promotes.

Beside the goal (number of dimensions covered), we shall also pay attention to the *strength* of the anchor created. As we saw when describing Morlino and Magen's EUCLIDA framework, the rule adoption is only a part of the policy process. The anchoring of the democratic regime, as Morlino and Magen underlined, covers three different layers: rule adoption, rule implementation and rule interiorization. The authors also proposed the hypothesis on the process in all three layers. In the previous paragraph, we also saw the characteristic of the IA that can influence the process of the rule promotion. Here we shall only define the concept of the strength of the anchor, which can be illustrated as the outcome achieved in each of the three layers. Not all international organization are keen or able to also

monitor the process of the rule implementation and interiorization, which only means the formal influence on the domestic regime, and only partial change. The three sub-processes are mutually interrelated, but do not necessary take place together. The intensity and strength of the anchor depends on the outcome in *all* three processes.

2.6. The Hypotheses

At this point, we can try to integrate what we described above with the already existing framework of EUCLIDA. We decided to maintain the factors of the EUCLIDA that concern the domestic environment, integrating the factors on the supply side we described above in the framework. We unpacked Morlino and Magen's "credible action of the IA" and included the IA's interests, capacities, strategy and content of the promoted norms as the factors influencing the process on the supply side. The factors on the supply side are correlated, influencing one another: the choice of the channel of influence, beside being influenced by the IA's approach, will bear the mark of the IA's interests and capacities, while the content of the promoted norms will reflect the IA's interests that, filtered through the IA's causal beliefs, are operationalized in the concrete recommendations. All these factors would influence the level of the credibility of the IA's action. The more credible the IA's action (and consequently the more positive the development in each of the previously mentioned supranational level factors), the better the chance to have a successful process. However, the factors on the supply side are not enough to explain the exit. In order for the IA's action to have an effect, beside its credibility, a series of other domestic conditions is also necessary. First of all, the "actions of the IA shall be complemented by actions of committed change agents. If this happens, the changes of opportunities structures, the empowerment of change agents or of governmental elite or of civil society groups and relative weakening of veto players might take place. If so, there is the possibility of a shift in the cost-benefit balance for the decision makers. If there is domestic fluidity and no presence of domestic o international related alternatives, then the shifts bring a policy reassessment. If there is a policy reassessment, then there can be rule adoption. But there is also the opposite possibility at every step, of course especially if no policy reassessment occurs" (Morlino and Magen, 2008, p. 48). The content of the internationally promoted norms would influence the identity of the Change Agents, the

identity of the veto players in the domestic system, as well as the level of opposition to the rule adoption (see Figure 4).

The same conditions decide the International Actor's credibility of action when it comes to the layer of the rule implementation. It will be the interest of the IA to decide with what strength and in which measure the IA will insist on the rule implementation, while the capacities he has at hand (the possible developed capacity in monitoring the rule implementation being of crucial importance) would influence the credibility of his actions (see Figure 5).

Figure 4: "EUCLIDA REVISED: Factors and the Rule Adoption".

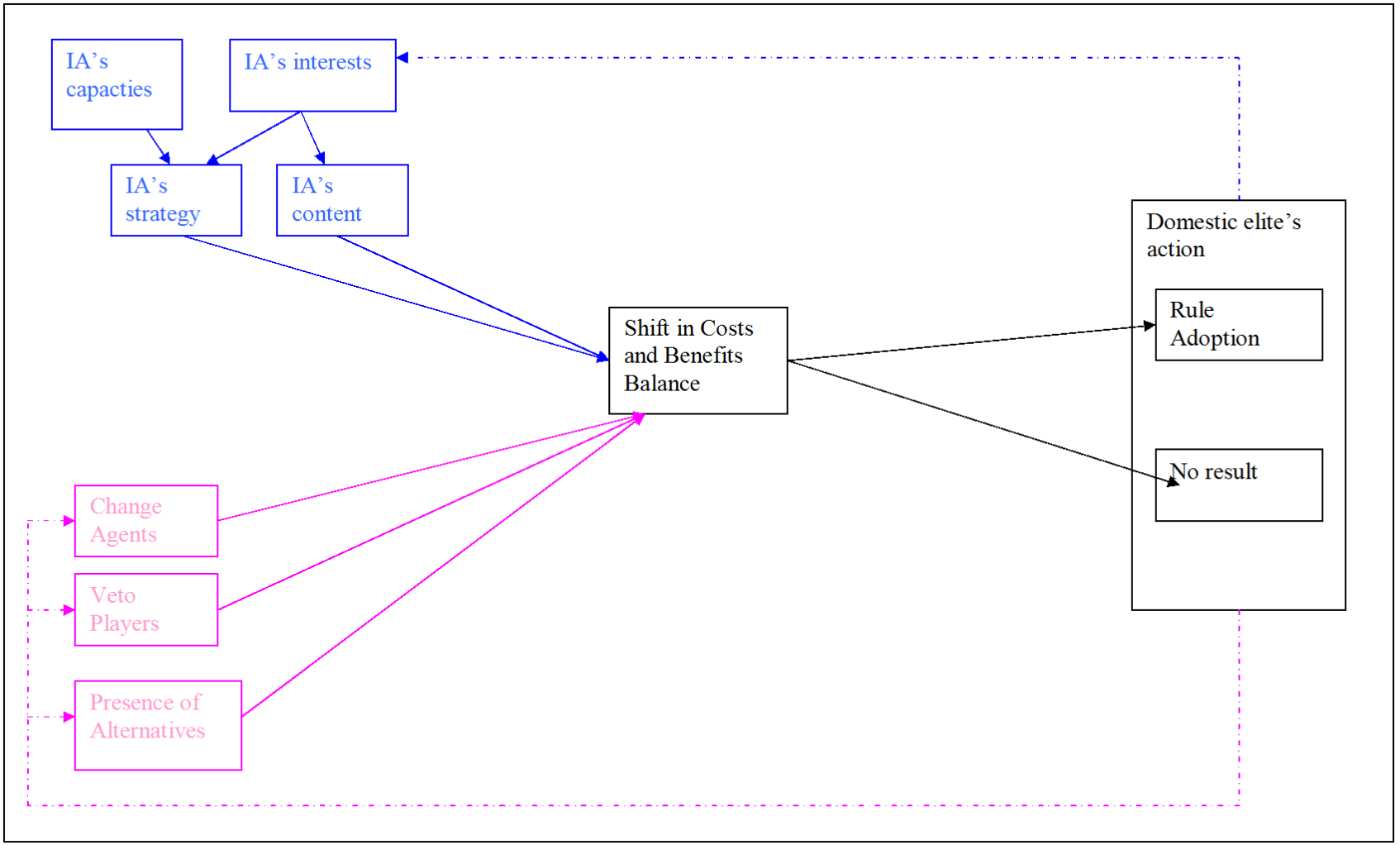
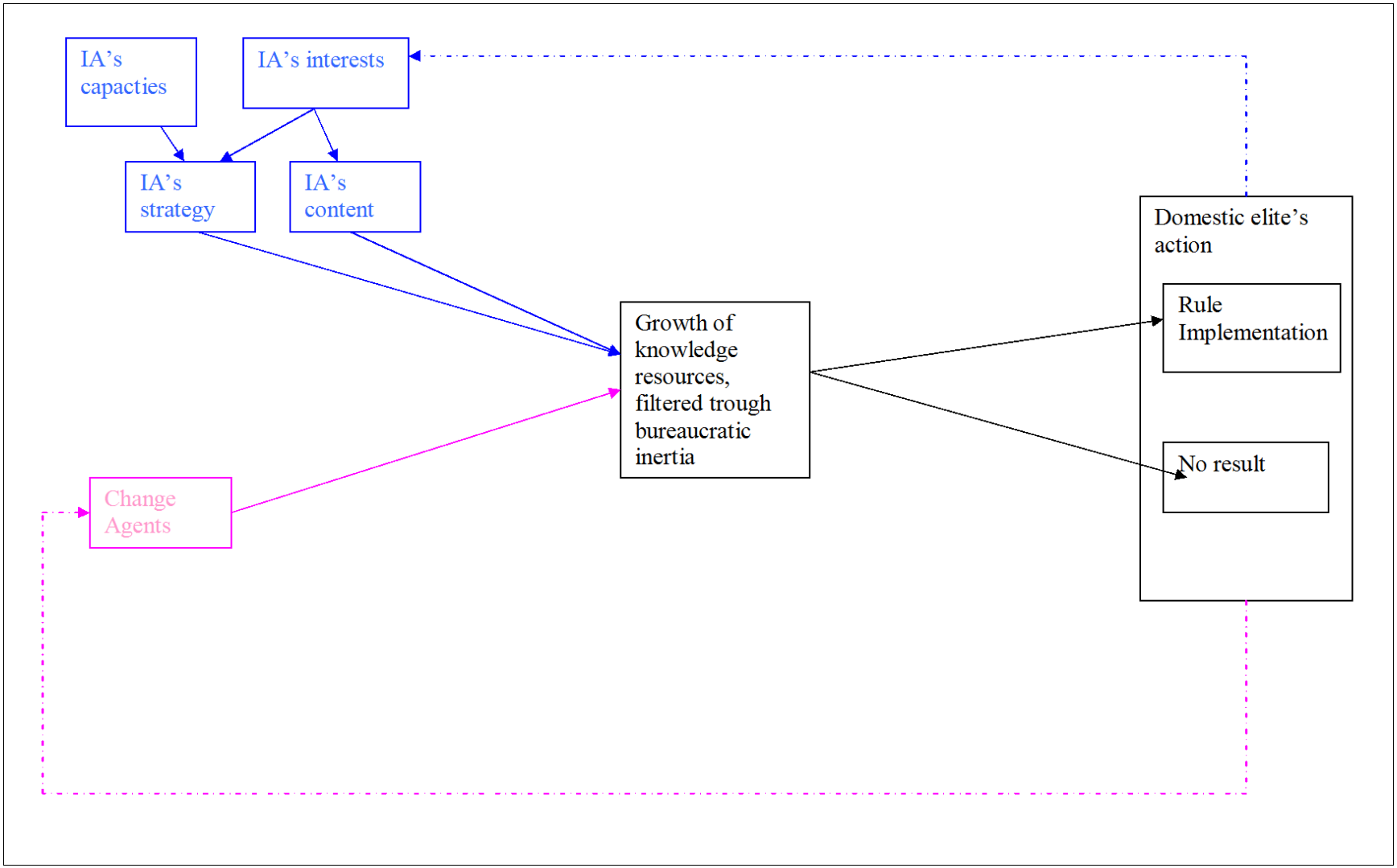


Figure 5: "EUCLIDA REVISED Factors and the Rule Implementation".



At this point, we can turn to the hypothesis concerning the process of anchoring and the feedback it produces. In the first part of this chapter, we defined a process of international anchoring of democracy as a particular form of the democracy promotion where the process of creation of linkage with the international actors opens the possibility to influence the domestic political regime.

The two processes, namely the process of boundary removal and the democracy promotion, are combined together in the more complex process of the international anchoring. The structure of interests of both the international and domestic actors are a crucial element for the framework, and should be assessed in the dimensions concerning both the regime change and the boundary removal.

Depending on the definition the supranational actor gave to democracy and on the content of the norms it decides to promote in the particular target state, the level of "misfit" between the supranational and domestic political regime might vary. The larger the misfit, the stronger the impact on the domestic political regime, as well as the pressure and possible change in the distribution of authorities at the national level (so the costs of rule adoption for the domestic elite increase). Besides, the system of preferences of the supranational actor would decide with what force the international actor would pursue the compliance, while its capacity would influence the efficiency of the strategies used. The pressure and costs of the democratization for the domestic decision makers would depend on: international actor's definition of democracy and its misfit with existing norms; the system of interest and preferences of the IA which would decide with what pressure the IA would seek the effective rule adoption; the institutional capacity of the IA to monitor the implementation; the costs and benefits balance of the domestic actors; presence and absence of the Change Agents promoting the norm and Veto players obstructing the change; the presence of alternatives and the stability/fluidity of the political environment.

If the compliance produces high costs for the domestic elite, the incentives deriving from the integration process and the rule promotion strategies adopted by the supranational actor have to be strong in order to "keep the boat of the regime near the island of democracy". Of particular importance is the process of the boundary removal, where we should assess the implications that the creation of the linkage has for the target state and its key actors. Where, as it is the case with the EU, the acquisition of the membership and boundary removal process imply the adoption of norms other than those included in the "democracy package",

the costs and benefits, as well as the strategies used in promoting the rules of the "integration package", should also be included in the analysis.

Both the democracy promotion strategies and the integration processes have their *consequences* and feedbacks: the domestic elite, perceiving the costs and benefits of its adherence to the IA, can decide to *re-assess* its preference towards the integration process. If the costs prevail, the "input to integrate" can decrease (domestic elite changes the preference towards integration), or it can completely disappear[71]. In this case, for the process to continue, the supranational authorities have to undertake further actions, more credible and more incentivizing, settling the content of the anchoring in a manner to produce a more favourable distribution of costs and benefits.

The feedback does not only influence the domestic actors, but can exercise its influence on the supply side as well. Undertaking the democracy promotion by offering the creation of the linkage with the IA means that the IA in question has some particular interests in the target state (be it the interest to spread the democracy, economic, strategic, security or other interests). The domestic developments thus influence the IA's perception of the target state and can bring to changes in the independent variables on the supply side (re-definition of interests and priorities, change of the strategy or change of the content of the promoted norms). The action of the IA, and the entire process, will be strongly influenced by the feedback of the process of international anchoring.

[71] An example is the recent change of Serbia's prime minister towards NATO: as a consequence of the NATO and especially USA approach to Kosovo, Koštunica completely changed his preferences and now opposes Serbia's integration into NATO.

3. EMPIRICAL RESEARCH TO CONDUCT

3.1. Choice of the International Actor: European Union

The empirical part of this study would be concentrated on analyzing the democratization process in Macedonia and Serbia, and the role the European Union played in the process of the anchoring (and de-anchoring) in the international regime of these two democracies.

The choice to concentrate on the European Union derives from a series of practical and theoretical arguments we will expose in this section

First of all, such choice was guided by the EU's "fame" as one of the most important supranational actors involved in the democratization, particularly in Europe[72]. A series of empirical studies showed how the European Union influenced the democratization in Eastern Europe and how it strengthened its influence on the neighboring countries in the last decade. As Pevehouse argues, the EU, as a regional IO, is far better suited for the promotion of democracy than the other, globally active International Organizations. Moreover, as the level of the diffusion of the norm *within* the IA influences the credibility and the outcome of the norm-promotion, the fact that the old EU Member States are all old, well-consolidated western democracies increases the credibility of the EU when promoting the democratic norms[73].

As one of the important factors of the revised EUCLIDA theoretical model is the strategy used, the choice of the IA was also influenced by its capacity to use any of the four strategies identified. According to the existing literature, the EU both possessed and used a good capacity to credibly use any of the channels of influence mentioned. Due to its organizational capacities, interests and geographical position, the EU is the potentially most successful actor in democracy promotion, and a crucial factor in explaining the (lack of) democratization in the Balkan area (see Magen, 2004, p. 24). The particularity of the EU, deriving from its "more than an IO, less than a state" nature, contributed to increase its capacity to efficiently use the conditionality channel of influence as it increased the value of the reward it can offer (see

[72] See Pevehouse, 2002; Vachudova, 2001; Magen, 2004; Reiter, 2001; Pehe, 2004.

[73] Such internal acceptance of the norms the IA is promoting is particularly important for the socialization strategies. See Flockhart, 2005, Schimmelfennig and Sedelmeir, 2004.

Magen, 2004, p. 22-23, on the costs of exclusion, see Vachoudova, 2001, pp. 10-11)[74]. This "attractiveness" of the EU membership and the desire for the membership the CEES showed in the first years of the Nineties opened a door to the EU influence. As the process developed, the EU learned how to better use its influence on the aspirant candidates, developing the institutional capacity necessary to effectively use conditionality as an instrument of foreign policy[75]. In present days, as Magen stresses, the capacities of the EU to promote democracy through conditionality are superior to the capacity of other international institutions, as "no International Organization established such elaborate and intrusive democracy and rule of law standards, or has monitored their implementation so strictly as the European Union" (Magen, 2004, p. 24).

Similarly, the EU's supremacy in terms of prestige, identity, values and prosperity, combined with the well-developed strategies for deliberation and socialization, turns the EU into one of the potentially most successful actors in the use of the socialization channels.

Last, but not least, the EU is one of the most influential international actors engaged in the democracy promotion in the two analyzed countries. If we analyze the data on the financial assistance to Macedonia and Serbia, we see how the EU assistance in both countries amounts to more than 50% of the total international aid received. A similar importance of the EU emerges from the analysis of the FDI origins in the two countries and the partners of the foreign trade. Beside the other neighbouring countries, the most important trading partners, as well as the investors in the two countries, are the EU Member States. This high level of the economic links between the Balkan states and the EU can significantly influence the EU leverage on the target states, making the EU the most relevant international actor in influencing the Balkan states.

However, the fact that the EU is potentially the *most* influential actor in the Balkan states does not mean that it is the *only* actor promoting the democratic values in the target states. a series of universal International Organizations (NATO, World Bank, IMF, UN) as well as of the regional organizations (the most relevant of which are OSCE and the Council of Europe)

[74] The success of conditionality is in function of the credibility and size of the reward. As far as credibility is concerned, the last enlargement has shown that the EU is capable, as well as ready, to give the reward in question. During the '90s, the European Union also developed more concrete criteria to be fulfilled by potential members in order to join the club, and in many cases the rule to be promoted is well specified, which increases the determination of conditionality and thus also its credibility. But the real importance of the EU as an external actor capable of promoting democracy seems to be the size of the reward: while USA, NATO or World Bank are also capable of offering credible rewards in order to promote the democratization, the size of the reward offered by the EU is far more attractive. Unlike the USA, the EU is able to offer the membership to the very institution as the highest possible reward.

[75] For the change of the EU's approach towards the CEE, see Vachudova 2001.

are active in both the analyzed countries. For this purpose, when tracing the process of the democratization in Macedonia and Serbia, we will also pay attention to the influence of other IAs as well, underlining, when relevant, their initiatives and role in promoting the democratic norms in the two countries. Moreover, we will pay attention to the joint action of the EU with these organizations (in particular with the Council of Europe and OSCE). As we saw in the section dedicated to the IA's organizational capacities, the capacity of the IA to undertake the joint action with other international actors increases the resources and capacities of the IA. Indeed, as we will see, the EU often promoted the compliance with the norms promoted by other regional organizations and made use of their assessments and monitoring mechanisms.

3.2. What Dimensions of Democratization?

Studying the international anchoring of a political regime in empirical terms means studying the anchoring of the specific *norms* and *rules* the political regime is made of. Studying the international anchoring of *democracy* in empirical terms means studying the establishment of the *democratic* norms or, in other words, of the *norms and rules that are typical for the democratic regime*.

In practical terms, this means that if we are to study democratization we shall first define which rules and norms shall be put in place if democracy is to be established. Moreover, as we are studying the international anchoring of democracy, we shall be able to compare the solutions adopted by the international actor (the content of the rule promoted, one of the explanatory factors in the model) to what we consider the most important dimensions of democracy. Only this way we can distinguish, among the norms promoted by the IA, which are the norms promoted as a part of the "democracy promotion" and which are the norms that, as not necessary for the democratization, were included among the requirements due to the IA's particular approach or interests and are part of the EU's integration package.

This is why we need to define the core dimensions of the democracy to be included in the analysis, and we cannot limit ourselves to analyse only those areas where the IA is active. This will allow us to empirically access the democratization process in the studied countries and the role of the IA in the process, creating an in-depth analysis not only of the process of the international anchoring of democracy, but also of the particular countries' democratization path. At the same time, it will allow us to compare the content of the norms promoted by the

IA with our definition of democracy in a way to account for the possible influence on the process deriving from the particular IA's approach to the issue.

As the content of the norms promoted (and its differences compared to the definition we adopt) is one of our explanatory factors, when searching for the operational definition of democracy and its core dimensions to be used in the study, we shall pay attention to the dimensions of democracy used by the IA we are studying. For example, adopting a very narrow definition of electoral democracy and analysing the activities of an International Actor engaged in the promotion of high-quality democracy implies that we will register a large amount of norms to be analysed as "political requirements that don't concern democracy". Otherwise, adopting a rich definition of democracy and assessing the influence of the IA promoting nothing more than the electoral democracy would lead us to conclude that the actor is not influential as it is active only in few dimensions. We therefore believe that the operational definition of democracy shall be as near as possible to the one used by the international actor we are analysing as an anchor.

In the 1993 Copenhagen criteria we find that the "stability of the institutions guaranteeing the democracy, rule of law, human rights and protection and respect for the minority rights" are the political criteria with which compliance is mandatory for any country aspiring to membership.

More particularly, we can notice how these dimensions of democracy are operationalized in the monitoring reports and the documents underlying the particular requirements.

In the European Partnership, the political requirements are grouped in "democracy and the rule of law", "human rights and protection of minorities" and "regional issues and international obligations". In the "democracy and rule of law" category the issues are grouped in the following dimensions:

- Constitutionalism
- Governance
- Elections
- Public administration
- Judicial system
- Anti-corruption policy

Human rights and protection of minorities is structured to include: observance of international human rights law, civil and political rights, minority rights, cultural rights and the protection of minorities.

The dimensions of democracy, as they appear in the EU documents, are very near to Morlino and Magen's five dimensions of the democratic rule of law[76]. Under the label "democratic rule of law" the two authors includes the following five dimensions:

1) Independent judiciary
2) Institutional and administrative capacity to formulate, implement and enforce the law (operationalized in a manner to cover the assembly, government, civil service, mechanisms of accountability, constitutional issues)
3) Effective fight against corruption, illegality and abuse of power by state agencies
4) Police respectful of rights and civilian control over the security forces
5) Protection of civil freedoms and political rights (here, beside other rights, also the independence of media and freedom of association are included).

While the five dimensions of Morlino and Magen's concept of the democratic rule of law tackle all dimensions of the minimal definition of democracy (electoral democracy), at the same time they include the judicial independence, efficient democratic institutions and the fight against corruption and illegality as the dimensions that were identified in literature as necessary to support democracy. Moreover, it also includes the civil control over the security forces in order to ensure that the democratically elected elite has the effective power to govern.

The importance of these dimensions for democracy were underlined, even though in different forms and differently grouped, by other authors as well. Mattina (2004) includes the following dimensions in his study of the democratization of the CEEC: rule of law and the institutional reform (the respect for the law and protection of the basic civil and economic rights, modernization of the public administration, judicial system reform including the guarantees for the judicial independence, strengthening and reform of the security sector in order to enable them to efficiently fight the corruption and organized crime, the establishment of an efficient police respectful of human rights), the human right guarantees (human, political, civil rights), political participation (in particular, the author here refers to the development of the local governments and of the civil society)[77].

[76] A similar definition of democracy can be found in Merkel who, when describing the "partial regimes of the embedded democracy" identifies: electoral regime, political liberties, civil rights, division of powers and horizontal accountability and the effective power to govern as the five dimensions (five partial regimes) upon which democracy is based. Yet, we find this definition not suitable for the purpose of this study as it poses a strong accent on the human, political and civil rights while the dimensions which matter in the approach of our international actor appear to be secondary.

[77] See Mattina, 2004.

Linz and Stepan (1996) identified five arenas of democracy: active and independent civil society, political society, rule of law (including constitutionalism, respect for the law, limitation of the ruling elite power, and the necessity for judicial independence), the administrative apparatus at hand for the democratic government and the economic society. The first four arenas include, directly or indirectly, all five dimensions identified by Morlino and Magen. The fifth arena, the economic society, in our opinion should not be included in our operational definition of the salient dimensions of democracy. We do not mean to discuss the causal relationship between democracy and economy in detail: we believe that given the sensitivity of the international democracy promotion and motivations driving the IA's actions, we shall not include any economic requirement or norm into our definition of democracy. We'll treat the economic requirements as a separate set of norms, part of the linkage process, that might change the domestic actor's costs and benefits balance, but not as a part of the democratic norms. The same is true for the international relations of the target state and its modes of foreign policy. Many authors underlined that the democracies' foreign policy shall be democratic. Thus, for example, Magen stresses that:

> "A more nuanced, longer-term understanding of democratization processes widens and deepens the canvas beyond procedure and formal institutions, to include questions of genuine democratic accountability, the quality of justice and administration, effective rule of law and regulatory structures, protection of human and minority rights, intolerance towards corruption, economic performance and even modes of foreign policy behavior." (Magen, 2004, p. 7).

Here again, as the *interests* and *motivations* of the external actor are one of our explanatory factors, we cannot embrace such a large definition of democracy that would allow the issues concerning countries' foreign policy to be considered as salient dimensions for the democratization process.

For these reasons we embrace Morlino's definition of the Democratic Rule of Law and decide to organize our analysis to represent, for each of our cases, the developments in the dimensions central to the democratic rule of law.

The first four chapters in the empirical part are dedicated to the existence of democratic and administrative institutions able to formulate, implement and enforce the law, and aims to examine the "system of governance", the constitutional design, the relationship between the institutions and their functioning. The constitution (chapter 4), the parliament, the executive and their relationship (chapter 5), as well as the he questions of the decentralization and local governments and the state bureaucracy and civil service (chapters 6 and 7), will be faced too. While the international actors are often recommending the new public management reforms

in the fields of the administration reform, we do not consider the NPM as a dimension defining democracy. The same is true for the internal organization of the state: independently on the approach assumed by the international actor, we do not believe that a particular setting (parliamentary vs. presidential democracy, majoritarian vs. consociative, unitary state vs. decentralization, bureaucratic vs. agency-based civil service) is to be a-priori considered more democratic. What we are interested in is the *existence of, relationship between* and *effective functioning of* the state's institutions. In our analysis we will pay particular attention to distinguish the issues relevant for the separation of power between the different institutions and different levels of governance (as a key for the horizontal accountability) from those issues concerning the *internal* organization and procedures of the institution. Here, as in the chapter five concerning the judiciary, while the internal organization, procedures and overall functioning are often linked to the institution's independence and role in the constitutional system, however separating the two might be of particular importance when trying to understand the possible failures in the democratization process (the link between the particular dimension analysed and the democratization process will be explored in the introductory sections of the relative chapters).

In chapter 8 we will analyse the process of establishing an independent judiciary system, where we will distinguish the dimension that concerns the *capacities of the judicial system* from the dimension that concerns the *judiciary independence.* The (lack of) administrative capacity of the courts can often represent a huge obstacle to the reform, and it shall be kept as separated as possible from the question of the relationship between the different branches of power. The question of the corruption, illegality and abuse of power would be faced in both the specific section concerning the judiciary, and in the more general chapter 9 concerning the fight against corruption.

The chapter 9 will be dedicated to the fight against corruption, and here we will concentrate on analysing the level and type of corruption, distinguishing between the lower-level, administrative corruption and state capture. We will trace the origins of the corruption and identify the domestic mechanisms that favour it, turning then to the development and implementation of the anti-corruption legislations and of the mechanisms aiming to limit the elite's abuse of power and establish the intra-institutional accountability.

In line with Morlino and Magen's dimensions of democratic rule of law, but also in line with the EU democracy promotion package, we dedicate the chapters 10, 11, 12, 13 and 14 to

the protection of human, political and civil rights. Particular attention shall be paid to the instruments, legislative framework and institutions put in place in order to guarantee the protection of the basic human, political and civil rights. In this section the right to vote, the media freedom and the development of the civil society associations and their role in the decision-making process will be given particular attention.

Finally, the last dimension of the democratic rule of law concerns the security sector and covers the police service and civilian control over the military forces to which we dedicate, respectively, the chapters 15 and 16. The developments in establishing a police which is efficient in its fight against crime and, at the same time, respectful of the human rights will be traced. The chapter 16 will be dedicated to the security sector where we will analyse the process of establishing the civilian control over the armed forces. The effective power of the elected officials to govern would be assessed by examining the role of the security sector and its relationship with the civil institutions. The intelligence agencies and the military represent a crucial actor in every democratization process as their submission to the civilian control, while crucial, can be established only in accordance with these forces. The inner contradiction is present in the military and intelligence service reform, as the effective democratic control over the security sector implies a high level of transparency in the functioning of these agencies for which the security reasons of the country do not allow.

3.3. What Additional Dimensions?

As underlined when describing the theoretical framework of this work, the particularity of the process of international anchoring is that it combines two otherwise distinct processes (democracy promotion and the creation of linkages with the external actor). In practical terms, this means that, to the costs and benefits deriving from the regime change, the costs and benefits deriving from the "boundary removal" shall be added.

As the two countries included in the analysis aspire to the EU membership, the package of the norms promoted by the EU covers not only the democratic norms, but also a series of other dimensions. Among the conditions that an aspirant member of the EU should fulfill, we find a series of economic requirements, the adoption of the acquis communitaire organized in more than 30 chapters (the negotiations with Turkey and Croatia include 35 chapters), as well as specific political criteria that differ from country to country. These requirements, while not

directly tackling the rule of law in the country, might, however, exercise an important influence on the country's relation with the international actor. The costs and benefits the actor are subject to due to the compliance with these norms enter the overall calculation of the costs and benefits, and might even influence the actor's preference concerning the integration process. As such, the developments in these fields are important factor that can exercise the influence on our independent variables and as such, indirectly, influence the EU promotion of the democratic norms.

As the range of this thesis does not allow us to include the entire EU integration package, we will select only a few dimensions considered most relevant for the development of the anchoring process. A preliminary analysis showed the particular relevance of the following dimensions: 1) economic issues, 2) specific political requirements 3) the promotion of the EU's institutions and promotion of the compliance with the requirements made by other International Organizations.

Economic issues have a particular role in the process of the EU anchoring and the democratization processes in two states, and they cover several dimensions. The integration with the EU has its economic dimension, often considered the most important dimension of the state's adhesion to the EU. The economic interests of the state, but also the interests of the economic elite (the two do not necessarily converge) represent one of the most important aspects of the integration process and, as such, these interests and the developments in the economic sphere, exercise an important influence on the domestic actor's costs and benefits balance. In which measure the membership perspective can push the compliance forward with the norms promoted by the EU will depend also on the national and business elite's economic interests.

In this section, we will also cover two other economic issues which, even though they do not concern the "integration package", are included in this section to keep similar issues together. The first of these issues concerns the EU's financial assistance to the state. The EU's democracy promotion activities are often combined with the financial assistance and incentives offered in order to facilitate the reforms. While analyzing the developments in the dimensions concerning democratization we will also tackle the financial support, in the section devoted to the economic issues we will tackle the general problem of the capacity of the EU's financial support to influence the domestic policy. Finally, in this section we will also examine the economic elite's interests in the field of democratization. The economic elite's preferences

concerning the change of the domestic political regime are one of the important issues influencing the democratization process. As Morlino underlined, the consolidation of the democracy needs the economic elite to accept the new setting (see Morlino, 1998, 2005). For this purpose, we will examine the economic elite's capacity to influence the decision-making process, its relations with the political elite, and, finally, the interests of the business in the process of democratization. Where the economic elite is capable to decide the course of the state's policy, the support of the economic elite would be a necessary condition for democratization. Where the political elite is stronger than the economic elite, such influence would be less decisive, even though the relevant economic actors can still influence the process.

We dedicate another dimension of the integration process to the most relevant specific political requirements that the EU addressed to the two countries. In Serbia's case, the EU political requirements covered a series of issues: cooperation with ICTY, Kosovo's status and respect for the UNSC Resolution 1244, respect of the Dayton Peace Agreement, relationship with Montenegro, good neighbourhood relationship with Croatia being the most important ones. The limited space of this study forced us to choose only some of these issues, so that we included the two that in a preliminary analysis appeared to be the most relevant for the process of anchoring Serbian democracy: cooperation with ICTY and the status of Kosovo. As in part of the period covered by this study Serbia and Montenegro were in a federation/State Union, even though the relationship with Montenegro is not included in the study, some of its aspects will emerge when speaking about the dimensions of democratization and the differences between republics' and state level. As far as Macedonia is concerned, the most relevant specific political requirement that the EU made to Macedonia concerned the name dispute with Greece.

The third dimension included in this part concerns the EU requirements for strengthening the domestic institutions specialized in fostering the process of the countries' integration (like the Agency for the EU integrations, the Parliamentary committee for the EU integrations, the Council for the EU integrations and similar) and the promotion of other anchors of democracy. By requiring that the state constitutes particular bodies with the task to deal with the integration process, the EU is creating the domestic change agents whose main task will be to make the entire process easier, promoting and supporting the EU agenda at home. Even though the EU includes these requirements in the section on the system of governance and

administrative capacity, these norms have nothing to do with the democracy-promotion package, as by no means the democratization necessarily means opening an office for the EU integrations. Similarly, the EU's requirements that the state adheres to other supranational organizations, signs a particular treaty or adheres to a particular regional initiative, represent the opening of new anchors linking the state to the international environment. Rather than promoting democracy, such requirements might positively increase the country's compliance with the EU agenda and represent a precious resource for strengthening the EU's interest. When the EU promotes the adhesion to another IA who shares the EU agenda and who conditions its membership with the compliance with particular norms, the pressure on the domestic elite increases and the other IA's strategies are added to the EU's strategies for promoting the particular norm. Moreover, this allows the EU to indirectly use the other IA's resources, particularly the monitoring mechanisms and the financial assistance that the partner is using towards the target state.

3.4. The Choice of Cases

The empirical part of this study will concentrate on the democratization process in Serbia and Macedonia. Aside from the political relevance of the Western Balkan countries, that since the end of the cold war represented the symbol of the pseudo-democracies engaged in the atrocities of the ethnic conflict in the very heart of Europe, such choice was guided by a series of methodological and theoretical reasons.

First of all, the existing literature studying the impact of the international actors on the democratization of the Balkans is still under-developed. The study of the EU role in the democratization outside the CEEC was surprisingly underdeveloped, seen this actor's activities in the field. This neglect was caused mainly by the separated development of the research on enlargement and studies of democratization. On the one hand, the literature on enlargement was guided by the debate between rationalism and constructivism, on the other, as we already saw above, the study of democratization treated the international influence, at best, as marginal. Only recently, with creation of the EU policies directed to the neighbouring states and with the Balkan states gaining the potential candidate status, the scholars started to make first steps in studying EU democracy promotion in non-member states. They finally started to perceive the enlargement as a powerful instrument of foreign policy and rejected the

assumption according to which the EU enlargement process, due to its temporal and spatial limitations, cannot offer us any generalizable lesson concerning the democracy promotion (see Magen 2004 pp. 3-12; Morlino and Magen 2008).

This resulted in research designs that try to understand the impact of the EU democracy promotion on non-member states in the light of the different relations these states have with the European Union. In the field, the most ambitious project is the one designed by Morlino and Magen that considers not only the supply side, but also tries to unpack the black box of the national state, surpassing the divisions between different approaches and disciplines, and taking into account not only the formal rule adoption, but rule implementation and rule internalisation as well. They concentrate their attention on four countries: Romania, Turkey, Serbia and Ukraine, each representing a different status of EU relationships (respectively perspective member, negotiating candidate, potential candidate and European neighbouring country), so as to offer a better understanding on how the differences in force of conditionality, opportunities for elite socialization and immediacy of incentives for compliance influence the outcome of the externally driven rule of law promotion. No comparative study analysing the differences and similarities in the outcome between the states with similar status towards the EU are present in the field. As we will see, until December 2005 both Serbia and Macedonia enjoyed the potential candidate status. Macedonia was guaranteed the candidate status as an act of political recognition (negotiations, however, still unopened), while Serbia was offered the signature of the political agreement in 2008, even though not fulfilling all criteria, in compensation to the SAA whose implementation was blocked by The Netherlands's insistence on cooperation with ICTY. The two countries can be analysed as sharing the same status in the first period (2000 – 2005), after which one advances in the integration (2006 – 2008), offering a possibility to study how the status in the relation with IA influences the compliance with the norms promoted and the process of democratization.

The two countries are also well-suited to satisfy a series of other criteria we considered relevant when choosing the cases.

Enjoying the status of potential candidate, the two Balkan countries are theoretically supposed to be much more influenced by the EU's democracy promotion strategies, conditionality in particular, than it is the case with the countries to which the neighbouring policy is applied or the countries outside Europe. The researches in the field underlined that the more intensive is the relationship with the IA, the nearer and more credible is the reward

and, hence, greater the external incentives for accommodation of the EU requests[78]. On the other hand, with the intensifying of the relationships between the state and the EU, the sinking cost of redrawing a reward for the EU increases and the credibility of threats in case of non-compliance decreases. The cases we chose for this study, potential members, satisfy the criteria of the strong external incentive for the rule transfer: being granted the status of potential candidate, the credibility of the reward is high, and, seen the geopolitical position, the costs of being excluded are also enormously high[79]. They are higher than in the case of other neighbouring states that have alternatives in their foreign policy[80] and were not granted the possibility of membership. Moreover, as we stressed, the credibility of the threat is higher than in the case of negotiating candidates.

At the same time, in both cases democracy is still very fragile and the anchors keeping the democratic regimes are of the great importance. As our goal is to study the process of democratization, it is obvious that we chose fragile and unstable democracies or hybrid regimes. The electoral democracies and hybrid regimes are particularly interesting cases for studying the influence of external actors. They are characterized by the existence of undemocratic practices and legacies, the internal factors undermining the democratic consolidation and full establishment of the rule of law, which makes the democracy promotion necessary. On the other hand, the existence of the relatively fair electoral process and some degree of pluralism opens the possibility for the IA to rely on the domestic electorate and weak civil society associations in a *two-level game* that brings the ruling elite under pressure to pursue the democratic reforms.

As the Copenhagen criteria established in 1997 during the Luxembourg summit, the country should be characterized by "the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities" in order for negotiations on the Membership to be opened, countries like Croatia or Turkey, that already opened the negotiations for the membership, were excluded from the choice of the cases. Macedonia's case is therefore particularly interesting, as the country's negotiations are still blocked exactly due to the lack of compliance with the Copenhagen political criteria[81]. Indeed,

[78] On the size and speed of reward see Schimmelfenning and Sedelmeir 2004, p. 665; on mechanisms and constraints of the EU influence see Grabbe, 2001.

[79] See Schimmelfenning and Sedelmeir 2004, pp. 665-666.

[80] On the influence of the presence of other alternatives, see Schimmelfenning and Sedelmeir 2004, p. 666.

[81] The shortcomings in political criteria that contributed to postpone the opening of negotiations concerned irregularities of the elections as well as the lack of independence and political neutrality of both public administration and judiciary.

according to the different data sets aiming to assess the level of democratization, Macedonia is much closer to Serbia (and in some dimensions its level of democracy is even lower than in Serbia), than to the countries that fully enjoy the status of the negotiating candidate (see Tables 1, 2, 3). In the Freedom House data set it is classified as *Partly Free,* and scores 3 points on both civil rights and political liberties dimension.

The two countries are also very similar if we consider the scores on different dimensions of democracy, as represented in Table 2: the largest differences concern the media independence, judicial independence, and civil society development.

The scores on Bertelsmann transformation index depict very well the fragility of both Serbian and Macedonian democracy. The BTI status index combines the scores on the political transformation and the economic development, as it is build to measure the development of the establishment of the *market*-based democracy. In the status index, countries with a score from 7 up have good prospects for consolidation of market-based economy (lower limit from 7 up to 8,20) while those that are nearer to 10 are judged as market-based democracies, consolidated or in process of consolidation. The countries scoring somewhere between 5 and 7 are judged as countries presenting deficiencies in terms of a market-based democracy. As we can see from Table 3, even though both countries pass the 7-point limit on the result in political transformation, they are both very near to the line of passing to the deficient cases, which well illustrates the fragility of their regimes.

In analyzing Macedonia's case, we will consider the period during which Macedonia was a potential candidate, sharing the same status with Serbia, (2000 – December 2005), separately from the period when it achieved the status of negotiating candidate to nowadays (from December 2005 on). Such approach allows us to face the question rising from the comparison of the level of democratization in Serbia and Macedonia: considering the fact that Serbia is considered a more democratic country than Macedonia in many dimensions, how can we explain the differences in the relations with the EU? Last, but not least, considering Macedonia, we can also analyze the differences in the outcome of democracy promotion in Macedonia before and after December 2005, as well as between the states with different relationships with the EU.

Table 1: "Relationships with EU and level of freedom in the Balkan area, 2005"[1].

	Political Rights:	Civil Liberties:	Status:	Relations with EU:
Bosnia:	4	3	Partly free.	Potential candidate.
Albania:	3	3	Partly free.	Potential candidate.
Macedonia:	3	3	Partly free.	Negotiating candidate.
Serbia and Montenegro:	3	2	Free.	Potential candidate.
Croatia:	2	2	Free.	Negotiating candidate.

[1] Source: Freedom House, "Freedom in the world country ratings 1972 – 2006".

Table 2: "Democracy rating by Freedom house in 2006 of the states included in the study"[2].

	Serbia	Macedonia
Level of democracy	*3.71*	3.82
Electoral process	3.25	3.25
Civil society	*2.75*	3.25
Independent Media	*3.25*	**4.25**
National democratic governance	4.00	*3.75*
Local democratic governance	3.75	3.75
Judicial Framework and independence	**4.35**	*3.75*
Corruption	4.75	4.75

[2] Source: Freedom House, country reports 2006

Table 3: "Bertelsmann transformation index (BTI) 2006 for the countries included in the study and Croatia".

	Result in political transformation	Status index	Ranking
Croatia	9.10	8.71	11
Macedonia	7.55	7.08	29
Serbia and Montenegro	7.40	6.95	33

Another advantage in choosing Serbia and Macedonia for a comparative study comes from the fact that the two cases are as homogenized as possible in the traditionally studied dimensions of democratization, making them a well-fitting comparable couple[82]. Belonging to the same geographic region and, more importantly, sharing the similarities in a series of cultural, historic, economic and political features, the cases we chose allow us to keep some of the variables considered crucial in the literature on democratization under control. The economic underdevelopment in the period immediately prior to the end of the communist

[82] On the importance of the comparability of the cases in the small N research designs, see Lijphart, 1971, p. 687. See also Collier, 1991, p. 123-124.

regime, the transition initiated by the old authoritarian elite and the victory of the ex-communists in the first free elections, the armed conflict and the multi-ethnic character of the state, combined with the nation-building policies undertaken by both countries after the dissolution of SFRJ and the breakdown of communism, all these are dimensions in which the two countries are very similar (see Table 4).

Table 4: "Domestic factors of democratization".

	Serbia	Macedonia
Type of the previous authoritarian regime:	1945 – 1989 one-party communist regime, with some characteristics of totalitarianism. 1989 – 2000 pseudo-democracy with some characteristic of the authoritarian regime with nationalistic mobilization. 2000 instauration of democracy.	1945 – 1989 one-party communist regime, with some characteristics of totalitarianism. 1990 instauration of democracy.
The break of the previous regime caused by:	Military defeat; Economic crisis; Opposition supported by the international actors.	Collapse of communism and dissolution of the SFRJ.
Ethnic violence and conflicts:	Yes.	Yes.
Process of nation state building:	Yes.	Yes.
Resolution of the ethnic tensions:	No (Kosovo issue, Preševo valley issue).	Only apparently (the inter ethnic tensions between Macedonians and Albanians are day to day reality, ethnic violence being a constant threat).
Presence of militant ethnic groups:	Yes.	Yes.
Previous experience with mass democracy:	Partially (in the mid-XIX century the universal suffrage and elections for the national assembly were established, but a fully developed consolidated democracy has never been established).	No.
Previous statehood experience:	Yes.	No.
The actors initiating the democratic transition:	Communists (1990). Democratic opposition and civil society with support of external actors (2000).	Communists (1990).
The first elections won by:	Ex Communists.	Ex Communists.
Ruptura pactada :	Yes.	Yes.
Process of the constitution design: presence of all relevant actors.	No (constitution of 1992 drafted without inclusion of the opposition parties, the constitution of 2006 drafted without consultation with national minorities).	No, until the Ohrid framework where in the "peace conference", as a result of armed conflict and pressures of the international community the amendments required by the Albanian minority were introduced.

While the EU was promoting the democratic norms in both countries and the prospect of the membership was offered to both Serbia and Macedonia, the *exit* of the anchoring process and the features of the democratization in two countries differ[83]. Serbia is among the first cases where the process of *de-anchoring* of the EU anchor took place and it is the only case where the signature of the SAA was delayed due to the lack of internal support and strong opposition to the EU integration. If, instead of pointing at Kosovo's issue as a cause of such exit, we try to trace the events that brought to Serbia's refusal to sign the political agreement offered by EU in February 2008, we can notice that this decision had its roots already in the very beginning of the transition in 2001 and that, rather than speaking of a radical change caused by the Kosovo issue, the developments followed the pattern described by the anchoring (de-anchoring) theory: each anchor contains the seeds of self-destruction, and under specific conditions, as anchoring is taking place, these seeds of self-destruction might develop as well. As far as the democratization process is concerned, while the status of two countries, as assigned by the Freedom House and BTI index, is similar, there are some interesting differences between the countries. Our preliminary analysis showed that the mechanisms that hamper the democratization in the two countries differ, as well as the dimensions in which the progress is slow. While Macedonia appears to be characterized by a very positive answer to the EU in the rule adoption, it shows particular difficulties in the implementation layer. On the contrary, there are hints leading to believe that in Serbia both the adoption of the rules in line with the EU requirements and their implementation were rather difficult. As the research will concentrate on rule adoption and rule implementation, such finding of the preliminary analysis is particularly encouraging for the choice of cases, as it allows us to use both Mill's "method of agreement" and his "method of difference" in order to test the possible need or sufficient conditions.

Finally, Serbia is the one of the rare cases where the EU tried to influence the domestic distribution of power, which gives us the opportunity to study the impact of this strategy and to compare the outcomes with the Macedonian case where such strategy was not used. On the other hand, Macedonia is the only case (except for the international protectorates in Bosnia and Kosovo) where, beside democratization, the EU was, and continues to be, involved in the peace-building process. Including Macedonia in the analysis allows us to study the democracy promotion in the context of a strongly segmented society and to examine the particularities of

[83] As underlined by Soifer, the process-tracing technique in the N=2 studies is best pursued if the chosen cases differ both on the causes and outcome side. See Soifer, 2006. See also the part on the method.

the democracy promotion in the unstable settings characterized by inter-ethnic conflict and threat of inter-ethnic violence.

The cases we chose appear to bear great theoretical importance, as they challenge the optimistic perspective upon which most of the studies were based, namely the assumption that the integration with EU is always perceived as a reward that opens the door to the successful democracy promotion process. In other words, as Magen (2004) stressed:

> "With the exception of Croatia, the Balkan "potential candidates" carry a daunting legacy characterised by chronic political instability, socio-economic underdevelopment and terrible ethnic violence. These challenges pose difficult tests for democracy promotion through enlargement, and the experiences of these countries and international protectorates over the coming decades will provide valuable material for developing theory about democratisation and democracy promotion" (Magen, 2004, pp. 19-20).

For all these reasons we believe that our choice to concentrate on Macedonia and Serbia, beside casting more light over countries that were rarely included in the analysis on the international influence on democratization[84], also offers the possibility to enrich our theoretical understanding of the international dimension of the democratization due to the particularities of the two countries analyzed.

3.5. Method, Data and the Research Design

The two main methods we will use in this study are comparison and process tracing. Such choice was directly influenced by the goal of our study, by its subject and by the number of cases we chose to analyse.

The main goal of our research is to examine whether and how the EU influenced the process of democratization in Serbia and Macedonia. Such question goes beyond the causal effect, which is only part of the problem. Once we assessed the relevance/irrelevance of the EU's influence, we are also interested in *how* exactly the EU influenced the democratization process, or, if the EU tried but failed to influence the process, why it failed. Finding that the EU promoted democracy in a particular case and that the country got democratized, while showing the co-variation, however, is not enough to claim the causal inferences, not to mention that would not be enough for answering the quest of our study. According to the

[84] There are almost no studies on the EU engagement in democratizing Macedonia, while Serbia was only recently included. See Dallara, 2008.

literature on the process tracing that is significantly growing in the last decades, such technique allows us to escape the problems that the co-variation poses, as it allows us to strengthen the claim of the causal effect by supporting it with the explanation of the causal mechanism[85]. Our quest follows Sayer's statement: "What we would like... is the knowledge of *how* the process works. Merely knowing that 'C' has generally been followed by 'E' is not enough; we want to understand the continuous process by which 'C' produced 'E' if it did" (Sayer, 192, pp. 106-107, cited in Bennett and George, 1997b).

The very quest of our study is formulated in such manner to unpack the mechanism through which the EU was influencing the two countries. Many of our independent variables influence each other, and all of them can work together to bring to the specific outcome. Further on, as we could see in the chapter on the theoretical framework, the variance in each variable is significant, and the observed values can go from absent and/or particularly negative, to present and/or particularly positive with all the different shades in between. Taking for example conditionality, which is based on offering a reward for the compliance, it can vary from absent to very important reward, from credible to less credible or not credible at all. The change agents can be present and with a decisive impact on the decision-making process, or present and influential, present but weak or completely absent and so on. In some cases a single factor (when particularly present) can turn into the sufficient condition, but if this is not the case, all other factors in the framework will turn out to be relevant, reinforcing or weakening each other in producing the particular outcome. For this reason we will use both the comparative (Mill's "method of agreement" and his "method of difference") and the process tracing method. With the first, we will try to assess the presence/absence of the sufficient or necessary conditions that make the change. With the second, we will try to trace how the set of factors brought to the specific outcome.

Not only the question around which this research is built, but also the very subject induced us to opt for the process-tracing technique. As Bennett and George argue, the process-tracing method that allows the understanding of the causal mechanisms is particularly useful when the goal is to examine the decision-making process[86] and it has particular values for further policy interventions:

[85] For a discussion on causal mechanisms and causal effects and the capacity of the process tracing method to reveal the causal mechanisms, see Bennett and George,1997, 1997b; Falleti, 2007.

[86] See also Falleti, 2007.

> "Causal mechanisms are also relevant to policy interventions because the ability to predict outcomes may not confer the ability to affect them through manipulable variables. For example even if it continues to hold up to empirical scrutiny, the observed correlation that democracies do not engage in wars with one another even though they have frequently fought wars against non-democratic states is only a starting point for policy prescriptions. It would be best to understand both the causal mechanisms behind the apparent democratic peace and those behind the emergence of democracy, and to identify those mechanisms that policy interventions can affect. Indeed, some studies suggest that transitional democracies are quite war-prone and may fight other democracies (Snyder and Mansfield, 1995)" (Bennet and George, 1997b).

We find this passage particularly interesting, not only for its relevance in our discussion on the importance of the process tracing method, but also due to the example that the two authors use, for, as we will see, the problem of the peace and democratic transition is particularly relevant for Macedonia's case.

Finally, the small number of cases included in this study also influenced our decision to use the process tracing and comparative methods. As several authors underlined, the process tracing is the most appropriate method for those researches with a small number of cases, exactly due to its purpose to reveal the causal mechanisms[87]. In small-N research designs, the main problem comes from the unfavorable relation between the number of independent variables and the number of cases[88]. Moreover, the small-N research design can not use the covariance as an evidence of the causal inference, which then makes it necessary to turn to the causal mechanisms and to trace the causal paths in order to explain the particular outcome.

This brings us to a reflection of how many cases we have in this research. The number of the countries included in the study is two, which means that our quest concerning the international anchoring of democracy and the EU influence on the democratization process will be assessed by referring to the two countries included in the analysis. However, in line with Lijphart's suggestion according to which one of the ways of strengthening the evidence consists in increasing the number of the cases, we will use the periodization, which identifies, within the single cases, different periods or cycles. This will allow us to assess both the spatial and temporal variance[89] and to compare the two countries as well as the different cycles in the single country. Our tasks on the state-level analysis will consist in assessing the outcome by observing whether the development in the different dimensions of democratization creates a single-country pattern, and whether there are significant patterns on the level of the independent variables that explain the outcome registered. In practice, for the dependent

[87] See Bennett and George, 1997a; 1997b, Bennett and Elman, 2006.

[88] On the problem concerning the number of the independent variables and number of the cases, see for example Lijphart, 1971.

[89] For the periodization of cases and temporal-variance see Bartolini, 1991.

variable on the state-level (democratization), we will use the outcome in the different dimensions of democratization as the components contributing to the sort of index of democratization. For the independent variables on the state-level, we will use the main trend (when there is such trend) of the independent variables in order to create the sort of index for each independent factor. Once the national patterns are identified, we will be able to make a cross-country analysis.

Similarly, we will try to assess whether on the state level there are specific cycles in which the developments followed the same direction. Once, if available, the periods are registered, we will be able to undertake the diachronic comparison, assessing how in the specific country the change of a particular factors produced (or failed to produce) a specific outcome.

Beside the state-level analysis, we will also be able to make a cross-issue comparison. In the section dedicated to the choice of the dimensions of democratization to include in the study, we identified 13 different areas of policy grouped in five dimensions: 1) Judiciary system; 2) Institutional Administrative Capacity (including constitutional issues, form of government, territorial organization and decentralization), civil service; 3) Fight against corruption and organized crime; 4) Human, political and civil rights (covering: freedom of expression and independence of the media, freedom of association and development of the civil society, protection of human rights and institution of the ombudsman, right to vote and the minorities' rights); 5) Security sector (covering: the police service and civilian control over the military forces).

This practically means that for the purpose of the research a cross-issue analysis covering 13 different areas of policy can be undertaken. Indeed, beside aiming to explore the differences and similarities in the democratization path in Serbia and Macedonia, we will also be able to apply the revised EUCLIDA analytical framework to each of this areas of policy and create 26 different stories of external norm promotion. This will allow us to examine in details when and how the international actor influenced the domestic change, what are the factors bringing to the compliance with the internationally promoted norm and how our independent variables combine one with the other in a chain that brings to a specific outcome. Moreover, some of these areas of policy have different venues and can register different developments. For example, as the police service concerns both the efficiency of the police forces and the protection of the human rights, the developments in two venues can follow different paths. The same is true for the territorial organization where the development of the

local self-government and the regionalization can follow different dynamics. These are only the two most immediate examples, but in each other area of policy it is possible that an uneven change took place in the different sub-areas concerning the same issue, and whenever the analysis reveals different patterns within a same dimension, we will consider the sub-venues of the particular issues as distinct cases to include in the cross-issue comparison.

Including the cross-issue analysis will allow us to examine whether there are cross-country similarities that can be explained by the particularities of a specific issue, and it will allow us to offer a rich assessment of the outcome of the external norm promotion. Further on, it will also allow us to examine those known as "deviant cases" in the single states. We underlined above that for the cross-country comparison we will concentrate on the prevailing national patterns. However, it is possible that some dimensions do not follow the general state pattern. It is possible, for example, that in some dimension the outcome is particularly positive or negative, or that some of the independent variables are particularly relevant in one dimension but not in others. The cross-issue comparison will allow us to identify such cases and seek the explanation of the registered particularities.

We shall conclude this chapter with a few words on the data and organization of the work. The empirical part is divided into two sections, the first being dedicated to the democratization process and the second to the most relevant issues of the integration process. The assessment of the developments in each area of policy included will follow the same pattern. As our main variable is the *change*, we will have to assess the status quo in the initial period of time (for both cases in 2001, even though for Macedonia, when relevant, we will observe the developments in the Nineties as well), pondering on the particular problems in each dimension and the mechanisms that brought to a particular status quo. The changes will then be tracked, describing the reforms that took place (or, in those cases where there were no changes registered, describing the final failure of the reforms) and following the process that brought to the change. While in tracing the process we will pay attention to the factors of the EUCLIDA, the main goal of these sections will be to tell the story of the specific reform and on the factors that brought to the change, regardless if these are part of our independent variables or not. Such approach, inspired by the inductive process-testing methods, will be useful to check for the existence of other relevant factors that were not included in the model, but that might be decisive for explaining the changes, allowing us to test whether or not there

are alternative explanations to our model[90]. After exploring the changes and assessing the current status quo, we shall summarize the influence exercised by the EU and make a short theory-guided process-tracing summary for the specific area of policy in the specific country. The theory-guided process tracing the assessment will fully explore the capacity of the revised EUCLIDA framework for explaining the changes registered in a particular field. Once the developments in both Serbia and Macedonia are described, we will make a cross-country comparison for the specific area of policy, offering tables summarizing the main findings in the appendix, comparing the two countries' particularities and offering the tables summarizing the EUCLIDA factors.

As the integration process is not part of our dependent variable, but its development is relevant for our independent variables, the chapters in this part will follow a slightly different pattern. We will mainly concentrate on the EU requirements in these dimensions and the impact that the development in these areas had for the overall process of anchoring.

Various sources of data will be used. The most important for assessing the status quo will be the official documents (constitutions, national legislations and regulations, reports of the state institutions, governmental law-drafts). The reports of the relevant NGOs, both national and international, also represent an important source of information for following the changes in the specific fields. The secondary literature and the works of the Macedonian and Serbian scholars will be used for researching the necessary information, but also for the research of the alternative explanation to be tested against EUCLIDA framework. The preferences of the particular actors will be traced from the public statements of the politicians and other relevant actors, from the party programs, the electoral platforms, the speeches in the assembly, the media, interviews given and other written documents. In order to follow the debate that marks the particular change, we will follow the important media in the countries. In particular, we will use B92 for Serbia and Utrinski Vesnik in Macedonia, the choice made due to prestige these media enjoy and the fact that, due to the foreign ownership, the two are considered to be the media with the lowest interference by the domestic politics. This practically means that while we can expect the less politicized reporting on the domestic developments, due to the foreign ownership, attention should be paid to all those issues that concern the international actors and in particular the EU. Finally, both media offer very rich on-line archives which represent a very precious source of information. Whenever possible, the information found in

[90] On the inductive-process tracing, theory-guided process tracing and the methods that are in between the two, see Bennett and George, 1997b.

the media, the secondary literature, the NGO's reports will be validated by the confrontation of the information achieved from different resources.

For assessing the variables on the supply side, we will use the EU's official documents, press releases, statements of the Commissioner for Enlargement and other political leaders when relevant. Here again, the secondary literature will also be used, in order to trace the useful information, check for alternative explanations to EUCLIDA and understand the factors that might have influenced the factors on the supply side.

Part II

Democratization and the Rule of Law in Serbia and Macedonia

4. THE CONSTITUTIONAL ISSUES

"The strength of the Constitution lies entirely in the determination of each citizen to defend it. Only if every single citizen feels duty-bound to do his share in this defense are the constitutional rights secure."
Albert Einstein

In the following paragraphs we will trace the process of the constitutional reforms in the two countries in order to examine the process of research for the political consensus that lies at the basis of any democracy[91]. Even though not all democracies have a written constitution and not in all cases the constitution has the position of a supreme law limiting the legislature's powers of the ruling majority[92], still, in any democratic society there is a written or unwritten agreement, supposed to represent what is known as the "political compromise", which defines the political community and the rules of the game. In the ideal circumstances, the constitution or any similar document should be the expression of a deeper political consensus over polity and over the minimal democratic procedures for the peaceful resolution of the conflict. We can thus argue that even when a political regime is based on the constitution prescribing clear rules of the game, if such constitution is not an expression of the political consensus among all relevant political actors, we can question both the level of democracy in such system and its sustainability, as the unsatisfied elements of the society might push for change.

For this reason, the adoption of the constitution was often perceived in literature as one of the crucial moments of the democratization process and, according to many scholars, the constituent process, its context, the timing, the actors involved and the interests they

[91] Even though democracy can be perceived as a regime where the uncertainty over the content of the decision-making process is institutionalized, still, as Bobbio (1991) argues, the decisional uncertainty in the democratic regimes is *limited* by the compromise over the rules for the peaceful resolution of conflicts. The content of the compromise that lies at the basis of the political regime varies from one polity to another, but we might argue that in all cases some minimum agreement over the dimensions and borders of the political community, the definition of polity ("The people can not decide until somebody decides who are the people", Jennings, 1956, cited in Rustow, 1970, p. 351), and the rules of the game, the procedures for the "peaceful resolution of the conflicts" are a necessary part of this agreement.

[92] Lijphart perceives this problem as the problem of the sovereignty of majority and rights of the minority. The process of amending the constitution, as well as the process of changing this basic consensus, in the author's model, becomes one of the elements distinguishing between the majoritarian and consensual types of democracy.

represented can be decisive for the exit of the process of the democratization. Linz and Stepan underlined that the conditions under which the constitution is adopted represent one of the explanatory factors for the future of the democratic transition process. Moreover, the specific constellation of actors present during the process will also decide the particular content of the solutions adopted.

In the following paragraphs we will trace the constitutional changes in the two studied countries. While the content of the constitutions regulating the specific questions will be examined in other chapters (for the parts of the constitution concerning the judiciary see the section on the judicial system, for the protection of human rights see the section on human rights, etc.), in this section we will examine the building up of the political consensus, paying attention to the existence of anti-constitutional sentiments and actors seeking for their change and impact. As the constitution represents the basic consensus in the society and its amending often requires particular procedures, in case it has some authoritarian, undemocratic elements, it can become a serious obstacle for the democratization process. The necessity to amend the constitution in order to foster the democratization process can become a window of opportunity used by the minority groups holding veto power to push their own agenda forward. For this reason we will pay attention also to the possible existence of constitutional solutions that are harmful for the democracy and whose change is necessary for the process of democratization.

4.1. Serbia: Consensus over the Non-Solution

4.1.1. Closing and Opening the Windows of Opportunity: Why not Before and Why Now?

When Milošević's regime fell in October 2000, Serbia found itself with a constitution that reflected the realities and interests of the Serbian communistic elite in the aftermath of the fall of communism and before the dissolution of the SFRY. The changes that the country underwent in the '90s (the Socialistic Federal Republic of Yugoslavia disintegrated; the creation of the Federal Republic of Yugoslavia; the establishment of the UN protectorate on part of the territory) and the change of the political regime in 2000 created an urgent necessity for the redefinition of the basis of the state. Finally, the document was not harmonized with the constitution of the Federal Republic of Yugoslavia of which Serbia was part, which

seriously undermined the constitutional order of the country[93]. The document was strongly delegitimized, all political actors calling for the necessity of the constitutional reform[94].

As Vukašin Pavlović stressed, while the countries in transition usually need about six months to accomplish the constitutional reform, in Serbia we needed 6 years[95]. The best moment for a constitutional reform in Serbia surely was the day after the 5th October 2000, when a series of favourable social and political circumstances came together: the old regime parties were weakened, there was a large consensus for reforms, the new ruling elite had no wasted interests in the existing institutions and was open to new, democratic solutions. This moment was lost, mainly due to the certitude that the constitutional reform should start from the federal level, meanwhile implementing the existing constitution which, due to the pseudo-democratic nature of Milošević's regime, was an acceptable transitional solution[96]. Yet, as the growing Montenegrin support for the independence and the blockage of the institutions at a federal level delayed the constitutional reform of the Federation (finalized only in February 2003 with the adoption of the Constitutional Charter of the State Union), this transitional period in Serbia was also prolonged. The Serbian Democratic Opposition (DOS) was not capable of surviving that long, and by the time the reform was on the agenda, the positive energy of the 5th October 2000 had already disappeared.

At the beginning of 2003, the discussion on the procedure to amend the constitution started[97]. The dilemma was the same as in the fields of judiciary and administrative reform: shall the transition be undertaken in continuity with the previous periods, or shall it continue with the October revolution and make a clear cut with the previous period? In the field of the constitutional reform, the dilemma continuity/discontinuity, beside its obvious moral and political implications, also had some very practical sides. The amending procedure prescribed by the constitution required a very large consensus, absent in Serbia since the division of DOS, which meant that – should the continuity approach be adopted – the numerous veto players would make the process difficult and time-consuming. On the other hand, violating the prescribed procedure would create a precedent undermining the legality of the new act, and, most probably, would bring to the exclusion of the significant actors from the process of

[93] On the constitutional reform of the FRY – State Union of Serbia and Montenegro, see Baracani, 2005. See also Dallara, 2008.

[94] For the argumentation of the necessity for the constitutional reform in Serbia see Koštunica, 2002.

[95] Cited in: Jovetić and Rusovac, 2005.

[96] See Samardzic, 2005.

[97] For the debate over the procedure for the constitutional changes see the archive of B92 for the period of the spring 2003. On the analysis of the different procedures for the constitutional change, see Hiber, 2002.

constitution building. The debate over the content of the new constitution was concentrated on the solutions concerning the political regime (election of the president), the definition of the state (national or citizen formula) and territorial organization. The definition of the state and the territorial organization represented were linked with the most salient dimension of the political conflict in Serbia: nationalism vs. citizenship/or democracy[98].

The debate on the constitutional reform was stopped in summer 2003 when, after Đinđić's assassination and in a state of emergency, Serbia fell into a deep political and institutional crisis, and the DOS coalition was broken due to inner conflicts and scandals[99].

After the parliamentary elections in December 2003, the distribution of the seats in the assembly gave the nationalistic SRS the power to veto any initiative requiring qualified majority, increasing the ideological distance between the actors whose support was necessary for the adoption of the new constitution. The new parliament assigned the task to work on the constitutional draft to the parliamentary commission by the end of March 2004, but the same old issues remained the Apple of Discord.

The dispute over the procedure prevailed in the debate over the constitutional reform, cohabitation between president and hostile prime minister further complicating the process: in some moments Koštunica proposed to give the assembly a status of "constitutional assembly" with a specific mandate to adopt the new constitution, while the president proposed to call for elections for the constitutional assembly. In 2005, and in the first half of 2006, the activities over the constitutional reform were sporadic, mainly due to the lack of political consensus. Both the prime minister and the president drafted their own constitutional proposals, "to serve as a starting point in negotiations".

In July 2006, after almost six years, the first "positive" news could be heard: the parliamentary commission of experts agreed on the first half of the document (protection of human rights), while the question of the definition of the state was left to be solved in the parliament.

[98] The prevailing of these three topics in the debate over the new constitution was underlined already in 2002, by Pajvančić, where the political system, the territorial organization and the definition of the state emerged as the three points of disagreement in the different proposals of the constitution analyzed by the author. See Pajvanic, 2002. About the critical issues in the debate over the constitution in the first period of negotiations in 2003 see also http://www.b92.net/info/vesti/index.php?yyyy=2003&mm=06&dd=21&nav_id=111845.

[99] The constitutional commission fell into a crisis due to the discordance between its members http://www.b92.net/info/vesti/index.php?yyyy=2003&mm=06&dd=21&nav_id=111869, to be finally dismissed in November 2003.
See: http://www.b92.net/info/vesti/index.php?yyyy=2003&mm=11&dd=20&nav_id=125310.

At the beginning of September the spokesman of the DSS, Aligrudić, announced: "We are near to the adoption of the new constitution, which draft might be finished already by the end of the autumn"[100]. Only two days later, the president of the parliament Predrag Marković promised that "the draft of the constitution will be finished by the end of the week"[101], that the teams were working on the two proposed documents, as well as on the proposals and amendments suggested by SRS. The final result was that the last changes in the draft were made on 29/09, and the day after, on September the 30th, the document was adopted in the parliament with unanimity.

4.1.2. The Constitution Re-written

Seen that the constitutional reform was on the agenda ever since October 2000, and the work started in March 2003, seen the notorious discordance of the Serbian political elite, such development was rather surprising and unexpected. It induces us to wonder what conditions brought to such wide consensus, one of the very few in Serbia's long history of continuous internal conflict[102].

September 2006 was a particular moment in which a series of circumstances made the political interests of different stakeholders converge towards the constitutional reform:

- in May 2006 Serbia became an independent state through the secession of Montenegro and the final dissolution of Yugoslavia (State Union of Serbia and Montenegro), increasing the already urgent need for a constitutional reform;
- the negotiations of the SAA with the EU were ceased in May 2006 due to the Serbian failure to ensure the positive assessment of its cooperation with ICTY;
- G17 plus, one of the three coalitional partners, announced that the party would withdraw from the ruling coalition if the SAA negotiations were not re-opened until the 01st October 2006[103]. A withdrawal of support from G17+ to Koštunica's minority government would cause the fall of his cabinet and most probably new parliamentary

[100] See: http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=09&dd=02&nav_id=210373&nav_category=11.

[101] See: http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=09&dd=04&nav_id=210572&nav_category=11

[102] On the constitutional reform in Serbia, see also Dallara, 2008.

[103] On the positions of G17+ and its threat to withdraw its support to the minority government see http://www.b92.net/info/vesti/u_fokusu.php?id=122&start=480.

elections, including the new electoral competition as a part of the actor's costs and benefits calculations; [104]

- due to the strong, but salient diplomatic activities oriented to re-opening the negotiations even without the arrestment of Mladić, and due to the unofficial news published in the media on the 1st September, and never commented by the EU or by the Serbian government, the government received the news that there was the chance that the negotiations would be re-opened at the beginning of October[105];
- at the beginning of September it became more and more clear that the solution for the final status of Kosovo was to be found before the end of 2006;
- Koštunica's government and the parties composing the ruling coalition were losing the popular support. The ordinary elections were scheduled for December 2007, and all parties in the opposition had an interest for the elections to take place as soon as possible. According to some authors, this desire was even more pronounced than before, due to the privatization of some important national firms scheduled for 2007[106].

In such a political climate, the constitutional reform could be useful for a series of short-term political goals, and all relevant actors had something to gain if the constitution was adopted. The political moment was particularly positive: being the constitutional reform a subject of the EU priorities, if there was any hope that the negotiations would be re-opened, the Serbian government needed as much positive judgment as possible, seen the situation with ICTY and the constitutional reform could be spent to obtain more positive assessment of Serbian reforms. The government's survival would also be ensured. If the negotiations were not re-opened, the constitutional reform would ensure that G17+ would not withdraw his support in such an important moment as the constitutional reform. The new elections would be scheduled, satisfying the opposition's requirements, but not due to the dismissal of the assembly. Moreover, the constitutional reform would be an important achievement for Koštunica to underline during the electoral campaign[107]. The whole process of the constitutional reform and scheduling of the parliamentary elections could also serve as a good argument in postponing the negotiations over the status of Kosovo (see further), while the

[104] According to Lutovac, this was the main reason why the constitution was adopted (interview with Lutovac, 2006. b92).
[105] http://www. b92. net/info/vesti/index. php?yyyy=2006&mm=09&dd=01&nav_category=11&nav_id=210240. http://www. b92. net/info/vesti/index. php?yyyy=2006&mm=09&dd=02&nav_category=11&nav_id=210335.
[106] Interview with Lutovac, 2006, b92.
[107] This was precisely what actually happened.

Kosovo issue and the re-emerging nationalism could be once more cheaply used to gain support for both the referendum on the constitution and for the parliamentary elections. All these factors pushed the Serbian political leaders to force their deputies to vote for the document some of them did not even have time to take a look at.

In order to block any opposition to the constitution, the document was represented as a "way to defend Kosovo"[108], as in the preamble of the constitution Kosovo was defined as an integrated part of the Serbian territory, meaning that any document giving independence to Kosovo would be against the Serbian constitution if not approved by a 2/3 majority in the parliament. Consequently, the lack of time for public discussion over the constitution was justified on the grounds of urgent national interest and the referendum for constitution was almost proclaimed the referendum for Kosovo. The nationalistic rhetorics were again abused, as in the times of Milošević, to ensure the popular consensus[109]. At the same time, such rhetorics also served as an instrument to capture all other political parties and relevant actors: obstructing the constitutional reform meant being against the state's highest national interest. It was no surprise that, by October 2006, the violence against the parties and NGOs calling for the boycott of the referendum was almost double[110].

In Serbian diplomacy and international politics, the constitutional reform and scheduling of the parliamentary elections served as an argument for postponing the negotiations over the status of Kosovo (this was confirmed by Martti Ahtisaari as well as by Xavier Solana, who proposed to postpone the discussion on the status of Kosovo until the parliamentary elections[111], as it was feared that the further radicalization of the Serbian electorate, prior to the parliamentary elections, would bring the nationalists to power). Moreover, some actors thought to use the uncertainty of the elections and nationalistic threats as an argument to obtain the re-opening of the SAA negotiations as one more impetus for Serbian voters to opt for the democratic forces (Tadić tried to use this argument in order to obtain the re-opening

[108] See http://www.b92.net/info/vesti/u_fokusu.php?id=122&start=495&nav_id=211785.

[109] It is surprising how the process of the adoption of the 2006 constitution reassembles the process of the adoption of Milošević's constitution in 1990: the same lack of debate, the same nationalistic rhetorics, the same research of support in the name of a higher national interest and in order to "save" Kosovo, and, according to the critics of the act, the same solutions being the points shared by the two constitutional reforms Serbia underwent since 1990.

[110] About the cases of violence against LDP and the civil and political actors opposing the constitution, see B92 for the period of autumn 2006.

[111] http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=10&dd=05&nav_id=214271&nav_category=11 Only 3 days after the adoption of the new constitution in parliament, the Council of Europe had withdrawn from the agenda the discussion about Kosovo's status where the position to proclaim the conditioned independence was proposed.

of the negotiations, which was used as an incentive for the creation of a pro-western government[112]). This way the negotiations over the constitutional principles were in large measure supported by political short-term calculations. Those who were less advantaged by the mere adoption of the constitution saw some of their own priorities included in the text of the document in exchange for support to their document. Particularly interesting are the interests of SRS in the adoption of the constitution: beside the inclusion of some of their principles in the text of the constitution (the Kosovo issue, the definition of the nation) and potential gains from the new parliamentary elections, this party finally gained recognition as a possible partner in government, as their "involvement in the process of adoption of the first democratic constitution" testified their support to the Serbian democratic political regime making.

As far as the content of the adopted document is concerned, we shall underline that many of the questions dividing the Serbian political elite were not solved by the new constitution. The most difficult questions, such as the territorial organization, the decentralization and status of the autonomous provinces were offered no solutions. The parts of the text referring to the territorial organization are complicated, in many points ambiguous, unclear and with loopholes opening the doors to contradictory interpretations. Moreover, the constitution left many crucial problems concerning decentralization to be settled through ordinary laws, creating a situation where the simple parliamentary majority could change the territorial organization of the country. Similarly, the articles on the judiciary left a series of loopholes undermining the constitutional guarantees of the judicial independence, once more leaving it up to the fragile ruling majorities to decide what level of independence the judiciary would be given (please see the section on the judicial reform in Serbia).

Of particular importance is the constitutionalization of the imperative mandate: "in order to discipline the deputies" the legislator gave, through the article 102, the possibility for the deputies to "give their mandates to the parties". The already strong party leaders were given full control over their party's deputies, thus increasing the ruling parties' control over the assembly, and, indirectly, over all other institutions (like judiciary) appointed by the assembly (please see the section on the parliament). Further on, the lack of consensus over the foreign policy modeled the part concerning the international law and its integration into the domestic

[112] Within the EU there was a disagreement over the use of such tactics: Italy, Austria, Slovenia and Hungary pushing for the re-opening of the negotiations in order to give new "impetus" to Belgrade. See http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=10&dd=17&nav_id=215673&nav_category=11.

legislation resulting in the controversial formulations of the Article 194. Not only was the supremacy of the international law not included (in the light of Serbia's aspiration to enter the EU, this solution complicates the procedure for integrating the EU agreements into the domestic legislative system), but the constitutionality of the international agreements Serbia signs and ratifies shall also be examined (this way opening a further veto point in the absorption of the international arrangements into domestic legislation). Finally, there appears to be a discordance on whether the newly prescribed procedure for the constitutional reform is more or less difficult than the one established in the previous document. During the campaign for the referendum, all political actors underlined that the new procedure is simpler, as it avoids the referendum. Yet, the article 203 prescribed the two-steps process, where a 2/3 majority decides that the constitutional reform shall initiate, then the same qualified majority has to vote for the changes, while the referendum is mandatory for changing 154 out of the 205 articles of the constitution (the parts concerning the preamble of the Constitution, the principles of the Constitution, the human and minority rights and freedoms, the system of authority, the proclamation of the state of war and emergency, derogation from human and minority rights in the state of emergency or war or the proceedings of amending the Constitution).

One of the main criticisms to this document concerned the fact that it did not introduce significant changes. According to some, it is the same constitution designed by Milošević in 1990. For those who concentrate only on the parts of the political system this can be considered true: no drastic changes in the design of legislative and executive were introduced, which means that the future implications of the constitution on the distribution of power between political parties and the possible implications for the party system will be minimal. This is an expected outcome, seen that the constitution was designed almost exclusively by four already consolidated political parties, all having wasted interest in preserving the existing structure of powers. The document was also criticized for the low quality level of the text that in some places is unclear, repetitive, even contradictory and subject to different interpretations[113].

Among the changes considered positive by the domestic actors and the international community, we can find the comprehensive catalogue of fundamental rights guaranteed by the constitution, some of them far above the minimum standard requisites. The introduction of

[113] "… The new Constitution has all the hallmarks of an over-hasty draft which does not do justice to the previous standards", European Commission for Democracy through Law (Venice Commission)'s opinion on the constitution of Serbia adopted by the Commission at its 70th plenary session (Venice, 17-18 March 2007) opinion number 405/2006.

the constitutional basis for the work of the Ombudsman and civil control over the army are also welcomed changes. The introduction of the principle of the civilian control over the army and the restriction of the presidential powers in the period of the state of emergency/state of war were also considered positive developments.

Serbian leaders and analysts, as well as the Venice Commission, also welcomed the change of the procedure for the recall of the president, that under the new constitution is no longer "a mission impossible".

4.1.3. The International Actors and the Constitutional Reform

Since the end of Milošević's regime, both the constitutional framework of the FRY and the constitutional framework of Serbia were subject to EU criticisms and requests for reform. In this paragraph we will try to trace the recommendations of the EU concerning the constitutional reform.

During the first period of transition, from October 2000 until March 2002 when the Belgrade Agreement[114] was signed, the EU activities in the field were concentrated in ensuring the survival of Yugoslavia. The EU mediation between Belgrade and Podgorica was an important element for ensuring the creation of the State Union of Serbia and Montenegro in February 2003. Once the Constitutional Charter of the State Union was adopted, the republican constitutional reform came onto the agenda. The constitutional reform was thus recommended in the annual report in 2003, and included, among the priorities listed in 2004, the EU partnership with Serbia and Montenegro. Beside the harmonization with the Constitutional charter, the constitutional reform in Serbia was also supposed to address the problem of the status of Vojvodina and territorial organization, the lack of constitutional appeal for the protection of human rights and constitutionally grounded Ombudsman. However, no 2004 short-term priorities explicitly concerned the territorial organization or constitutional status of Vojvodina, and in the field of the Ombudsman the EU only requested the "adoption of the legislation setting up the ombudsman office". The language of the conditionality was rather general, mentioning only "a constitutional reform in line with the Constitutional Charter", while the particular issues (such as territorial organization or judicial independence), even though expected to be solved through the constitutional reform, were kept separated.

[114] The Belgrade Agreement is the term used to refer to the agreement between the two constitutive republics of the Federal Republic of Yugoslavia on the formation of Serbia and Montenegro.

In the 2005 feasibility study, the constitutional reform is seen as one of the necessary and most urgent steps to take. In line with the adoption of the twin-track approach, and as the dissolution of the State Union became a more and more realistic expectation, in these documents the constitutional reform is for the first time no longer linked to the harmonization with the Constitutional Charter, but to "the European standards". It seems that, during 2005, the constitutional reform represented a necessary condition for signing the SAA: Labus, at the time vice-president of the government, clearly underlined that "During the negotiations it became clear that the adoption of the new democratic constitution is a necessary condition for the signature of the SAA[115]".

While in the feasibility study the constitutional reform results as one of the key priorities needed to be met, in the 2006 report the constitutional reform is included among the short term priorities, but does not belong to the list of the *key* short term priorities. It is important to underline that, at the beginning of 2006, the negotiations with Serbia were already questioned because of the lack of cooperation with ICTY to be suspended in May 2006.

During the constitutional reform, particularly in autumn 2006, the international community, EU included, kept themselves aside from the domestic developments[116]. The sensitivity of the moment (lack of ICTY cooperation and the Kosovo issue reopening) meant that the IA decided to accept the reform that, even though it showed clear signs of fake compliance, was too sensitive to be intervened upon. On 02/09 the EU welcomed the achievement of the political agreement for the new constitution and did not give any assessment on the document, underlining that the EU's assessment would be available as soon as they received and analyzed the official translations (expected for 08.11, ten days after the referendum).

In Tab.1 we summarize the EU's priorities that directly or indirectly concerned the constitutional reform. We should underline that at the time the EU partnerships were published, both the protection of the human rights and the civilian control over security forces were among the authorities of the State Union. The EU recommendations to the republic of Serbia on the constitution aimed to anchoring the republic level document to the Constitutional Charter and ensuring its implementation. The Constitutional Charter of the state union was praised to be a very good legislative framework for the protection of the human rights.

[115] Labus' statement at the press conference, 12. 07. 2005.
[116] See also Dallara, 2008.

4.1.4. Constitutional Reform: Assessment and Conclusions

As stressed by the Venice Commission, as well as by the EU Commission in the 2006 report, the constitution adopted in September 2006 is only partially in line with the European standards, and this partial compliance has serious consequences on the compliance in other dimensions of the rule of law as well.

In this paragraph we'll represent the distribution of our independent factors.

The constitutional reform was among the EU priorities from the first days of the transition, but only after the adoption of the twin-track approach in 2005 it was detached from the issues concerning the survival of the State Union. This moment was of crucial importance, as since then the Serbian ruling elite became really responsible for its actions, and so the determinacy of conditionality significantly increased. At the beginning of 2005 the constitutional reform was considered a necessary condition for the signature of SAA, the external pressure for the constitutional reform in that period can be considered high, but the internal veto players undermined the reform. As the lack of cooperation with the ICTY caused the ceasing of SAA negotiations between Serbia and EU, the conditionality linked to the constitutional reform lost its importance. Yet, suspending the SAA negotiation had an *indirect* influence in the constitutional reform, as it completely changed the cost and benefits balance for all actors included in the process. According to some authors (Lutovac, interview with Antonela Riha for Poligraph, 29 September 2006), the EU's action created domestic instability and fluidity which was further "stressed" by the re-opening of the negotiations for Kosovo's status and the Montenegrin independence.

The actors interested in promoting the change[117] succeeded to redefine the constitutional reform in a manner to pose it as a perfect solution for the problems existing in that moment and to change the costs and benefits balance for all political parties involved in the process.

As for the presence of alternatives, they concerned particular provisions and mainly came from the interests of the political parties in maintaining the status quo (judicial (in) dependence, deputies' dependence on parties). In these fields we can recognize a clear sign of social influence, as the ruling elite was cautious enough not to adopt the norms directly criticized by the Venice Commission, showing a tendency to comply at least apparently[118].

[117] Koštunica insisted so much on the new constitution of Serbia already since 2000, that the "constitutional reform" was recently ironically proclaimed to be "Koštunica's dream".

[118] See the section on the judiciary.

For the Serbian new constitution to satisfy the European standards, further amending is necessary. Some changes can be introduced through the ordinary legislation (as we will see in the field of the judiciary), but here again the lack of constitutional guarantees for some basic democratic principles (like the judiciary independent, for example, or the free mandate) can persist as a serious problem. Seen the polarization of the Serbian elite, and the qualified majority required for amending the constitution, the possibility that the necessary constitutional changes will be adopted is very low. The political elite in Serbia, the new and the old government, all appear united in not considering the constitutional reform computed. While most of the political leaders in the campaign for the referendum on constitution were underlining that "the document is acceptable, and, even more important, we will easily change it after the elections", now no one is mentioning the necessity to clarify some of the constitutional shortcomings. As we can read in the government's action plan for meeting the EU priorities, in the field concerning the European partnership priority to amend the constitution in line with the European standards, the government simply states that "the assembly of Serbia on September the 30th adopted a constitution that was further confirmed by the referendum on November the 8th after which the Constitutional Law for its implementation was adopted".

4.2. Macedonia: In Search of National Unity

4.2.1. The Constitution of the Independent Nation State of Macedonia

The creation in 1903 of the short-lived Kruševo Republic represents the first effort to create a Macedonian state, but it was doomed to fail only 10 days after its creation under the attack of the Turkish troupes crashing the Macedonian rebellion against the Ottomans. The Balkan wars in 1912-1913 opened again – for a short time – a hope for the creation of an independent state. The Macedonian elite signed the memorandum for the creation of the Macedonian state and handed it out to the British minister of the foreign affairs, but in the Bucharest Peace Conference such document found no place. Instead of independence, the geographic region called Macedonia was divided between the regional powers (Serbia, Bulgaria and Greece). Due to the unfavorable environment and the presence of the three regional forces with territorial claims over its territory, Macedonia was forced to wait another forty years in order to be given the status of the republic of the constitutive nation in Tito's

Yugoslavia[119]. Finally, almost one century after the Kruševo republic, on November the 17th 1991, the deputies elected in the first pluralistic elections ever organized in Macedonia adopted the constitution of the independent republic of Macedonia.

Since 1991, the constitution underwent few changes. The most important of these changes was the 2001 constitutional reform that incorporated the provisions of the peace agreement (Ohrid Framework Agreement, OFA), when the supreme act of the Macedonian state finally obtained the official legitimacy to the eyes of its most numerous ethnic minority. In this section we will face the issues concerning the Albanian-Macedonian relations and the amendments to the constitution that took place in the '90s, while we dedicate the second paragraph to the changes that took place after the Ohrid peace agreement.

One of the most important constitutional issues after the dissolution of Yugoslavia concerned the definition of the titular nation. As in the SFRY Serbs, Croats, Macedonian, Slovenes and Montenegrins were all given the status of titular nations, the dissolution of Yugoslavia brought into question the position these ethnic groups would have in secessionist republics. At the same time, the nation state-building logics of the secessionist republics induced the new elite to choose the definition of the newly forming states on ethnic-national rather than civic principles[120]. Like all other countries in the region, the Macedonian constitutionalists opted for the nation-state formula. Underlining the historic and cultural particularity and the right to self-determination of the Macedonian nations, the preamble defines the state as the national state of the Macedonian people, but it also underlines its civic and democratic character, granting equal rights to all the minorities (Albanians, Turks, Vlachs, Romas and other) who live in the country.

In the rest of the document, the constitution adopted a civic concept of the state and attempted to create a framework for the effective equality of the minorities based on the protection of their ethnic, cultural and religious identity. The human, political and civil rights were given full guarantees in the constitution (the direct applicability, constitutional court as the guarantee of these rights and constitutional basis for establishing the ombudsman institution were all included), with particular attention being paid to the minority rights in an effort to avoid the tensions that the other Yugoslav republics were experiencing. The free

[119] On the causes that induced Tito to opt for the inclusion of Macedonia as a constituent nation and on the creation of Macedonia as a mean to introduce more balance within Yugoslavia see Buck, 1996.

[120] For their brilliant analysis of the fall of the communism, the dissolution of the Yugoslavia and the role the nationalism played in these processes, please see the works of Valerie Bunce, in particular, 1999. On the nationalism and ethnicism in the constitutions of the states formed after the dissolution of Yugoslavia, see Spizo, 1999, and Hayden 1992.

expression of ethnic identity was adopted as the fundamental value of the constitutional order, while the minorities were given the right to establish institutions of art and culture, scientific and other similar associations, the right to primary and secondary education in the minority language, and the right to the official use of minority language in those units of self-government where the national minority constitutes a majority. In order to avoid inter-ethnic tensions, the article 78 prescribed the creation of the Council for Inter-Ethnic Relations with an advisory role, prescribing that the assembly should take in consideration the Council's opinions and recommendations. The form of government prescribed by the constitution was a semi-presidentialism, with limited powers granted to the directly elected president and the prime minister as the head of the executive. The protection of the constitutional order is assigned to the constitutional court with the assignment to assess the constitutionality and legality of the acts, to protect the human, political and civil rights of citizens, and to decide in the disputes between the state institutions. Such setting, a particular mix between the ethnic and civic principles and solutions that can not be found in other constitutions of the former Yugoslav republics, was mainly a consequence of the mix between Gligorov's and SDSM's pragmatism and VMRO's radical nationalism in approaching the question of the Albanian minority. In front of the necessity to seek for the VMRO support for the constitution and, at the same time, to conceal the Albanians' malcontent, Gligorov accepted the definition of the state as the nation state, but opted for the mechanisms for the protection of the human rights, establishment of the Council for the ethnic minorities, included the calls for the peaceful cohabitation with minority nations and practically created the tradition to include the Albanian political elite into the government in order to accommodate their interests.

However, the guarantees offered by the constitution did not succeed in ensuring the support of the Albanian ethnic minority that boycotted the referendum on the constitution. Their main dissatisfaction concerned the status of national minority (instead of, as they would prefer, the status of the constituent nation in a bi-national state or the civic definition of the state), the failure to guarantee high education in Albanian language (see also the parts on the minority rights), and the failure to include the use of the Albanian language in the assembly. The question of the status was of the crucial importance. The Albanian minority claimed that under all Yugoslavian and Macedonian governments their interests were underrepresented and their ethnic group was discriminated, basing on such claims the belief that the status of the national minority they were given in the constitution would open the door to further

discriminations. Another salient issue was the failure to ensure the university education in the Albanian language, perceived by Albanians as a main cause for the de-facto discrimination in the employment and their underrepresentation in the administration (please see also the section on minority rights). The Albanian political parties therefore boycotted the process of state-building and continued to challenge in their requirements the constitution adopted in 1991. The requirements for the territorial independence of the Albanian ethnic minority, the formation of the Illiria Republic and the referendum requiring the Albanian autonomy organized in 1992-1993 contributed to bring to negotiations over the new constitution which would accommodate the Albanian requirements[121]. An agreement between the ruling SDSM and president Gligorov with the Albanian representatives was found over the document defining Macedonia as a civic state, but the procedure for the amendment of the constitution did not allow its adoption in the assembly. The article 131 of the constitution prescribed a three-step procedure requiring the qualified 2/3 majority for the decision to initiate the amending procedures and for the adoption of the amendments. The VMRO thus successfully blocked the initiative in the assembly in 1993, while the lack of political will brought to successive failures in bringing the document back onto the agenda (see Buck, 1996).

Beside this failed effort to accommodate the Albanian minority requirements, there were two other constitutional changes during the '90s: the first took place almost immediately after the independence, when the name dispute with Greece was opened. The secession of Macedonia from the Yugoslavia rose concerns in the neighbouring Greece and Bulgaria. The geographical region known with the name of Macedonia includes not only the territory now known as the Republic of Macedonia, but also the region labeled as Pirin Macedonia in southwestern Bulgaria and Aegean Macedonia in Greece. The coincidence between the name of the nation state and larger geographic region, combined with the old, preexisting conflict over the territory between Greece, Serbia and Bulgaria, caused fear for the territorial integrity in the two neighbours of the newly born country[122]. As Greece successfully blocked the international recognition of the Macedonian state, the assembly in 1992, seeking to calm the Greek preoccupations, adopted two amendments explicitly underlining that Macedonia does not have any territorial pretensions on the neighbouring states.

[121] See Buck, 1996, also Daskalovski, 2004.

[122] On the relations between Macedonia and its neighbourhood and on the implications the unfavorable regional situation had on Macedonian inner and external politics, see Bozzo and Simon-Belli, 2000.

The second set of amendments was introduced in 1998 due to the strong pressure of the judiciary against the constitutional limitation of the maximum period of duration of the detention of 90 days. According to the criminal courts, that was an unrealistically high standard for the protection of the person's freedom in cases of serious crimes. The results of the implementation of such a standard, which was unique in the contemporary constitutionalism, was that a great number of criminals that committed the most serious crimes, due to the expiry of the maximum period of detention prescribed by the Constitution, were released from custody in order to defend themselves and they never appeared before the courts.

4.2.2. The Research for the New Consensus

Even though the constitution was even prized as a positive example of the minority right protection in the Balkans, it was not supported by the Albanian ethnic minority that, from the very adoption of the constitution, voted against it. At the beginning of the Nineties, the Albanian criticism of the constitution concerned the following three point: the status of minority, the failure to guarantee high education in Albanian language, and the failure to include the use of the Albanian language in the assembly. The period of the Nineties and the escalation of the ethnic violence in 2001 brought to the radicalization of these requests. After long negotiations with the Albanian national minority's representatives, mediated by the NATO and the EU, fifteen amendments were included in the framework peace agreement signed by the four party leaders. The agreed amendments were supposed to be adopted within 45 days of the cessation of hostilities. The most important changes introduced concerned: the preamble; the use of language; the territorial organization and decentralization; the introduction of the double majority principle that gave the Albanians veto power in numerous fields of policy; the equal representation of ethnicities in public bodies, the minorities' inclusion in the Security Council and the increase of minority representation in security forces (for more details see the relevant chapters). The constitutional reform undertaken as a part of the OFA thus had an important re-distributive effect, significantly strengthening the position of the Albanian ethnic minority.

Even though the amendments were agreed between the political leaders who controlled the 2/3 majority in the assembly necessary for the constitutional reform, the process was not as smooth as it was supposed to be. First of all, we shall underline the lack of democratic atmosphere that brought to the constitutional reform. Far from being an expression of basic

consensus and of the will of the citizens, it was a deal tied through the international mediation and in a situation of urgent necessity to cease the violence. The leaders signing the agreement were supposed to immediately present the agreed amendments to the national assembly and to "take all measures to ensure the adoption of these amendments within 45 days from the signature of the Framework Agreement" (article 8.1 of OFA). The public discussion that was opened before the final adoption of the amendments was nothing more than the period given to Macedonian majority to swallow the bitter pill[123]. The incumbent VMRO and prime minister, even though being among the guarantees of the OFA, made ambiguous statements concerning the agreement and the constitutional changes, trying to play the nationalistic card for the forthcoming electoral campaign. The most salient issues for the Macedonian majority during the period dedicated to the "discussion" were based on the same nationalistic perspective upon which the minority was basing its requirements. The preamble (where Macedonia was defined on civic and not ethnic principles) and seventh amendment (that gave all religious communities the same status), were perceived as attacks on the Macedonian ethnic identity and newly gained statehood. The Macedonian ethnic community perceived the amendments as a step towards the establishment of the bi-national state and towards the federalization that might end up in a disintegration similar to that of Kosovo. The discussion over the preamble completely blocked the process, as the Albanian parties, after realizing that the preamble wording is not acceptable for the Macedonians, withdrew their deputies from the assembly, and started to require the status of constituent nation, further contributing to the destabilization of the process. The strong intervention of the international community (and the EU in particular) was needed in order to find the solution in a new formulation that was promoted by the EU's special envoy. The Albanian side accepted the reformulated amendment only after the promises of the EU envoy concerning the position of the Albanian students and the amnesty for all crimes committed by the Albanians during the 2001 violence[124].

The amendments were finally adopted by 94 out of 120 deputies, and the 2/3 qualified double majority was achieved.

Since the 2001 amendments, the Macedonian constitution was revised twice. The first revision took place in the 2003 due to the EU requirements to allow the use of special investigative techniques and the newly elected government's intention to investigate and

[123] See Gaber-Damjanoska and Jovevska, 2001.
[124] See Gaber-Damjanovska and Jovevska, 2001.

prosecute the "tapping" affair[125]. The article 17 of the constitution that forbids tapping was changed in December 2003 when the XIX amendment, harmonized with the European legal system, was adopted.

In 2005, a new constitutional reform took place in order to meet the EU's pressures concerning the judicial independence. In the light of Macedonia's intention to submit the request for the EU membership, the judicial reform (see the section dedicated to the judiciary) was pushed and the constitution was to be amended. As the procedure for the amendment required the 2/3 qualified majority, this was perceived by the parties as the window of opportunity to push forward their requirements, conditioning their support for the necessary amendments. Among the most radical proposals was that from the Albanian parties to introduce the figure of the vice-president elected in a manner to allow equal ethnic representation and the requirement to wider the application of the double majority voting for the election of the president of the assembly (in order to ensure that one of the three leading positions – prime minister, president of the republic and president of the assembly – is given to an ethnic Albanian). Further on, the amendments concerning the judiciary rose both inter-ethnic and inter-party conflict over the different alternatives offered (see the part on the reform of the judiciary). However, in the light of the candidacy for the membership, the political leaders showed some will for compromise and the eleven amendments (XX-XXX) were adopted in December 2005.

Whether the constitutional reform in Macedonia is finished, it is still to be seen. The continuous ethnicization of the issues and radicalization of the minorities' positions is a serious risk for Macedonia's fragile consensus.

4.2.3. The International Actors and the Building of the Constitutional Framework

As we saw, in almost all cases of constitutional changes in Macedonia (the only exception is the 1998 amendment) the international dimension had an important role. The first constitutional change was introduced in hope to obtain the recognition of the country under

[125] In 2001, the opposition found out that more than 100 persons from public life were being tapped by the security services. The incumbent VMRO did not open the investigation (as the leadership of the party and the president of the republic were involved, as the investigation undertaken in 2003 has revealed). After their arrival to power, SDSM undertook the necessary steps to find the responsible after the scandal. The question of the tapping that at time was not properly regulated, allowing the use of the technique only to those cases when the state's security is at stake, and thus hampering the investigation of the organized crime, corruption and other criminal acts, was consequently opened. See Gaber – Damjonovska and Jovevska, 2003.

its constitutional name, the third was fully mediated by the IA, the forth and the fifth followed the EU's requirements.

Of particular importance is the international community's role in 2001. The EU, NATO and USA not only assumed an important role of mediator in the negotiations that brought to the cessation of hostilities and the signature of OFA in 2001, they were also involved in ensuring the implementation of the document. In such purpose the IA used all existing means of influence: beside technical support and legal assistance, the international community and in particular the EU exercised strong pressures on the domestic actors to accept the changes. They served as the guarantee for the commitments given by the actors in a manner that increased both the pressures to comply, and the credibility of the promises given. In this light it is significant to mention that, according to the domestic authors, the foreign diplomats showed great interest in getting the vote lists from the sessions of the Macedonian assembly, in order to see how the single parties voted on the OFA constitutional amendments[126]. The implementation of OFA and of the constitutional amendments introduced as a part of OFA was the main core of the international intervention in Macedonia. We can see how the implementation of the framework agreement and of the principles it underlined, was promoted and included as a condition in different areas of policy, from the administration reform (equal representation) to the decentralization, minority rights, police etc. Even the assistance to the human resources in the private sector included the respect of the principles of the equal representation as a condition for accessing the EU grants. We can thus conclude that in the measure in which the constitutional issues were linked to the OFA, the constitutional reform and its implementation became a core of the IA intervention, subject to all different strategies with a pressure exercised in a very credible manner.

The change of the Article 17 of the constitution was also subject to the EU pressures in the field of the fight against organized crime. Among the "Priorities need attention in the following 12 months" from the Commission Report 2003, we find the following requirement: "address the obstacles that forbid the use of any kind of special investigative techniques". Even though weak, the pressure, combined with the domestic window of opportunity, brought to the successful rule adoption.

Finally, the constitutional amendments that were adopted in 2005 were strictly required by the international community. The appointment of the members of the high judicial council by the assembly was identified already in the first SAA reports as a factor contributing to the

[126] See Jovevska and Gaber-Damjanovska, 2001.

increase of the politicization of the judiciary, but the solution of the problem through the constitutional change of the procedure for the election of the members of the HJC was explicitly required only since the 2004 European partnership (we find the requirement repeated in the 2006 Association partnership, but it is mainly due to the fact that the document, adopted in January 2006, did not take in consideration the changes that took place in December 2005).

4.2.4. Assessment of the Constitutional Reform

As we saw, the international actors played a crucial role in almost all cases of the constitutional change in Macedonia, particularly since the armed conflict in 2001. The assistance, legal advise, conditionality, negotiations and arbitrary between the ethnic communities, were all used by the international actors and the EU in particular in order to ensure the compliance.

The most important of all constitutional reforms surely is the one that took place in 2001. It was a change, we might say, pushed forward by the international community in the effort to ensure the settlement of the ethnic violence that took place. The IA's action, undoubtedly seen the situation, were security-guided. It is questionable in which measure the highest state act that is supposed to represent the consensus and the basis for the state functioning is democratic if adopted under external pressures and in a rush to cease the violence. The procedure of the adoption of the constitution (lack of true public debate), the context that brought to the constitutional change (violence and fear of new hostilities), the prevailing of the nationalistic argumentation in the debate that guided both the proponents of the change (ethnic Albanians) and the actors opposing the change (Macedonian majority), all these are sources of serious concern when we assess the democratic potentiality of the constitutional change adopted. On the other hand, neither the previous document was adopted in a better atmosphere, since it did not enjoy the support of the largest minority in the country, which brought to the events of 2001. Some authors, like Brier (2002, 2003, 2005), argue that the OFA (and the consequent constitutional changes) actually institutionalized the ethnicity, a situation that, instead of a solution to the conflict, brings to its consolidation. That known as the "May agreement" unfortunately testifies in favor of Brieber.

The "May agreement" is an agreement between DUI and the at time ruling VMRO, adopted after the institutional crisis caused in 2007 by the DUI[127]. The origins, content and even the act of creation of this document were kept in silence but, as not only the media but even the political elite continues to refer to it, its existence is more than certain. It was said to be a document drafted in mediation of the international actors who guarantee for its implementation[128]. The recently formed coalition DUI-VMRO, its functioning and the behavior of the relevant actors (like DUI's acceptance to delay the implementation of the part of the Law on Municipal Borderlines that refers to Struga and Kičevo, or the adoption of the Law on Use of Language, much opposed by the Macedonian majority) all appear to follow in the footsteps that media claimed to be prescribed by such deal. Beside the complete lack of democratic potential of such document (seen that it is unofficial) and the consequences for the rule of law the existence of such "unofficial constitution" represents, the existence of such document brings to the question the stability of the fragile consensus Macedonia is based upon. Even if such document remains only an "inspiration" for the preferable courses of politics, or if it takes the shape of some new constitutional re-arrangements, respecting the democratic procedures, it would still testify the fragility of the very basis of the Macedonian state. When responding to the criticisms of OFA, the SDSM party leader underlined that the constitution, after all, is always a product of compromise and, like all compromises, it might not be the best solution, but still it is a solution. Yet, we might observe, not all solutions are meant to last. So how much exactly is the Macedonian "solution" durable and stable?

4.3. A Comparative Assessment

The research for the consensus in the two cases we chose for this analysis followed different logics, expressing the particularities of each case studied. In Macedonia's case the main problem concerned the definition of the political community and research towards what Rustow labeled the "national unity" (1970). The lack of Albanian support to the constitution adopted in 1991 represented a deficiency in the birth of the political community that marked the Macedonian process of democratization. In that light, the biggest constitutional reform Macedonia undertook in 2001 as a product of the Ohrid peace agreement bears some of the

[127] On OFA, power-sharing mechanisms, May Agreement and their impact upon the inter-ethnic conflict in Macedonia, see Lebamoff and Ilievski, 2008.
[128] See Gaber Damjanovska and Jovevska, 2007.

elements potentially threatening for the process of democratization. While considered in line with the international standards, mediated and pushed forward by the international actors promoting peace and democracy in Macedonia, the power-sharing mechanisms built in the historical agreement between the Macedonian majority and the ethnic Albanian minority was considered by authors like Bieber the institutionalization of the ethnicization, a solution that brings to the maintenance, instead of the depoliticization of the ethnic conflict. Such argument, when combined with the strong criticisms Goio (2008) advanced towards Linz's and Lijphart's thesis of the possibility to use the federalization, power sharing and building of multiple identities in order to fight back the threat of nationalism, brings us to question the sustainability of the agreement between the Albanian ethnic minority and the Macedonian majority. Instead of introducing the civil criteria, the content of the OFA and the changes introduced in the Macedonian constitution contributed to the consolidation of the ethnic divisions. It locked the struggle for power within the ethnic groups, reinforcing the segmentation already present in other fields (civil society, media, religion, culture, language and even schools and universities). By making two distinct political segments that interact only at the highest political level, two worlds that communicate as less as possible[129], two political elites that do not compete against each other but divide their ethnic quotas, the Macedonian consociational democracy is left to and maintained by nothing more than the intra-ethnic log rolling in the multi-ethnic ruling coalitions. In the following chapters we will see how such situation is reflected in the specific fields of policy.

While power appears as the only interest keeping the leaders of the Macedonian political segments together, the Macedonian citizens' aspiration for the NATO and EU membership appears to be the only glue holding the fragile Macedonian national unity. Based on the international project of the Euro-Atlantic integrations and on the power-seeking ruling elite, the Macedonian peace appears rather unstable, especially in case the EU/NATO integration does not take place (see the recent events with the Macedonian membership in NATO) or making questions over the functioning of the Macedonian state after such goal is achieved[130]. It is no surprise then that the constitutional reforms in Macedonia saw the EU and

[129] It is astonishing for example that no academic works on the Albanian political parties are available in Macedonian language, or that the domestic political scientists report that they know very little about the Albanian political block due to the closure and communication barriers between the ethnic communities, the ethnically based universities included.

[130] "They all say: EU, NATO. And no one wonders what to do after Macedonia entered the EU and NATO. Macedonia has no other projects, no other development directions, no other values to follow other than the integrations. But what are we going to do once we achieve it?", interview with Hristova, Skopje, August 2008.

international actors as the main initiators in the process. The relative ease with which the constitution was amended in 2003 and 2005, even though the temptation to use this window of opportunity to push forward their own agenda was strong among the leaders of the small political parties, reflects the high degree of the Macedonian leverage towards the international community.

In Serbia we also find inherited deficiencies prevailing in the process. The Serbian constitutional reform in 2006 is one of the examples on how the delays in undertaking the reform can turn the constitution writing, this crucial moment of the state-building process, into a subject of short-term political bargaining. Unlike the case of Macedonia where the constitutional reform reserved important roles to the international community, both as the initiator of changes and as the mediator and the guarantee of the commitments in the case of the 2001 constitutional reform, in Serbia's case the international actors did not play a significant role in the process of the constitutional reform. The nature of the process (high politicization, the prevailing of the short-term interests, the hasty procedures) emptied the process of the constitution adoption from its nature of "search for consensus", leaving the most conflictive issues dividing the Serbian political actors unsolved. The territorial organization and the status of the judiciary were both left behind to be solved by the ordinary legislation, this way creating a situation in which the constitution is nothing more than the consensus over the fact that no consensus was possible.

The prevailing of the domestic actors and domestic themes in the process produced a situation in which, unlike in Macedonia, the constitutional reform was not perceived as a step towards the EU integrations, neither as part of the democratization reforms, making the compliance with the European and international standards and the democratic potentials of the document a sporadic element. We thus register the ambiguous result, the constitution only partially being assessed in line with the international standards, and the "desirable" and "democracy-oriented changes introduced" cohabiting with the solutions undermining the democratic practices (like the article 102).

Table 1: "The constitutional reform in Serbia and Macedonia".

	SERBIA		MACEDONIA
	Lack of constitutional reform 2000-2006.	Constitution 2006	2001
Main input for the change:	Domestic.	Domestic.	External/domestic.
IA's interests in specific field:	Democratization.	Democratization.	Security.
Conditionality:	Weak, sporadic.	Weak, sporadic.	Strong, decisive, continuous.
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.	Yes.
Were the recommendations made by the IA accepted?	-	Partially.	Yes.
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	-	Yes.	No.
Domestic input for the change:	Present: (regime change) 2000.	Present: Regime change 2000; Independence of Montenegro; Negotiations for Kosovo; Political moment.	Present (OFA).
Domestic actors pushing for the reform:	All (DSS).	DSS.	Albanian ethnic minority.
Level of conflictuality of the issue:	High.	Medium (important issues left unsolved).	High.
Type of conflict and main line of the conflict::	Inter-party.	Inter-party.	Inter-ethnic.
Did the issue concern the deep divisions in society?	Yes: continuity vs. discontinuity, territorial organization.	No. The difficult issues are avoided.	Yes: ethnic conflict.
Is the existing status quo strongly delegitimized by all relevant actors?	Yes.	Yes.	No.
Two or more alternative solutions present?	Yes (continuity vs. discontinuity).	-	No.
The procedure of law drafting:	-	Behind closed doors. Intra-party bargaining.	Behind closed doors. Intra-ethnic bargaining.
Outcome:	No change.	Constitution still failing to meet EU standards (particularly concerning: imperative mandate, decentralization, judiciary).	Constitution in line with EU standards (1991, 2001, 2005) (The national consensus is still fragile. Some constitutional provisions represent a source of further ethnicization).

In Tab.1 we bring the summary of the main motors for the constitutional change in the two countries (we bring the data for the most important cases: lack of constitutional reform in Serbia 2000-2006, constitutional reform in Serbia 2006 and constitutional reform in Macedonia 2001). The differences are striking: the security-guided IA in the case of Macedonia exercising strong influence and being the main promoter of the change, compared to the weak influence of the democracy-guided IA in the case of Serbia where the constitutional reform was a product of the domestic window of opportunity and political leadership's short term preferences.

APPENDIX

Table 2: "EU priorities and the constitutional issues in Serbia".

Report 2002	The constitutional stalemate must be clearly solved through constructive cooperation within a reconstructed and functional federal state Undertake the decentralization and reforms of local government, as well as other constitutional revisions".
Report 2003	Amendment of the republican Constitutions, by autumn 2003, in line with the Constitutional Charter. As part of this constitutional reform, promised decentralization and reform of provisional and local government should be, as relevant, adopted and implemented.
EU partnership 2004	Review the republican constitutions in line with the Constitutional Charter.
2006 EU partnership	**Short term priorities:** Revision constitution in line with European Standards.
2007 EU partnership	**Key priorities:** Ensure that the constitution and Constitutional Law are implemented in line with European standards Short term priorities: Align legislation and institutions with the new Constitution.
2008 EU partnership	**Key priorities:** Ensure that the constitution and Constitutional Law are implemented in line with European standards Short term priorities: Align legislation and institutions with the new Constitution.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia.

Table 3: "EU priorities and the constitutional issues in Macedonia".

Report 2002	Implement the Framework Agreement of the 13th August 2001.
Report 2003	Continue to accelerate the implementation of the Framework Agreement of the 13th August 2001.
EU partnership 2004	**Short term priorities:** Prepare necessary constitutional and legislative amendments to guarantee the independence of the body in charge of their selection and career development.
2006 EU partnership	**Key short-term priorities**: Adopt the constitutional amendments needed to implement the reform of the judicial system, in line with the recommendations of the Venice Commission. **Short term priorities:** Ohrid Framework agreement has been given a particular section where among the short term priorities we find: Ensure the effective implementation of the legislative framework adopted in accordance with the Ohrid Framework Agreement, with a view, inter alia, to promoting inter-ethnic confidence-building. — Complete the necessary legislative framework to implement the decentralization process and ensuring that municipalities have the necessary means to implement their new competencies. — Adopt and begin to implement a medium-term strategic plan for equitable representation of minorities in the public administration (including in the judiciary) and public enterprises.
2007 EU partnership	**Short term priorities:** Support implementation of the Ohrid Framework Agreement with a view, *inter alia*, to promoting inter-ethnic confidence-building.
2008 EU partnership	**Short term priorities:** Support implementation of the Ohrid Framework Agreement with a view, *inter alia*, to promoting inter-ethnic confidence-building.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia.

Table 4: "EC funding in constitution (OFA) reform in Macedonia".

Year	Amount	Program
2004	2 millions	Assistance to the Secretariat for the Implementation of the Ohrid Framework Agreement.
2005	0.2 millions	Support to the Sector for the Implementation of the Ohrid Framework Agreement.

Source: European Agency for reconstruction report 2006.

Table 5: "The process of the constitution adoption and the constitutional issues in Macedonia and Serbia" (author's elaboration).

Factors	Mk	Ser
Did all relevant political parties participate to the constitutional reform?	1991: No (Albanians excluded). 2001: Yes.	1991: No (only the communist elite). 2006: Partially (National minorities parties and some parties of the Serbian majority were excluded from the final negotiations over the constitution).
Was the public debate undertaken offering the civil society the possibility to discuss the solutions?	1991: - 2001; Yes.	1991: No. 2006: No.
Are there anti-regime parties considering the constitution illegitimate and requiring the change?	1991: Yes (Albanian minority). 2001: No.	1991: Yes (all oppositional parties). 2006: Partially: LDP questions some of the constitutional solutions calling for the harmonization with EU standards.
Does the constitutional revision require the qualitative majority?	Yes.	Yes.
Does the constitutional revision require the support of the ethnic minorities?	Yes.	No.
Does the constitutional revision require the referendum?	No.	Yes.
The most conflictive constitutional issues?	Inter-ethnic relations (definition of the polity).	Territorial organization (Kosovo's status included).
Is the constitution considered in line with the European standards?	Yes.	Only partially.
The constitutional issues hampering democratization	? [131]	Yes: the political influence over the judiciary; The imperative mandate.

[131] There is a possibility to question to what extent the power-sharing mechanisms, built into the Macedonian constitution as a part of the OFA agreement, will contribute to preserve the peace and consolidate democracy. Even though authors like Lijphart or Linz would argue that such mechanisms can help the peace and democracy building in the divided societies, students of the phenomenon of nationalism like Goio make a strong argument against that, mainly based on revealing the logical inconsistencies in Linz's work, thus questioning the capacity of the power-sharing mechanisms and multi-level identities to overcome the nationalist divisions (see Goio, 2008). Concretely in the case of Macedonia, Bieber (2003, 2005, 2002, 2004) will argue that the OFA represents some elements of the institutionalization of the ethnicization, a rather dangerous mechanism alimenting instead of decreasing the nationalistic logic. The question mark in this cell of the table indicates the uncertainty over the exit. The Macedonian constitution might become a source of peace and stability for the country as it offers mechanisms protecting the right of the Albanian minority, but the same solution might become a source of instabilities due to its potentiality to nourish the distribution of power incentives on ethnic basis, thus bringing to the persistence of the nationalistic rhetorics. To remember Rustow, we can argue that "The hardest struggles in a democracy are those against the birth defects of the political community". The Macedonian democracy was born with serious problems in defining its own political community, it lacked national unity due to the failure to integrate the Albanian minority and, consequentially, even after the OFA these inefficiencies, together with the medicine used to cure it, represents the key point of concern for the Macedonian future.

Table 6: "The constitutional amendments 2001 and 2005 in Macedonia: explanatory factors concerning the IA" (author's elaboration).

	OFA (2001)	Amendments on judiciary 2005
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	Yes (the donors' conference for Macedonia conditioned by respect for OFA).	Yes.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	No.	Yes.
Was the issue part of the EU's ***key*** short-term priorities?	-	Yes.
Was the issue part of the EU's short-term priorities or was it included among the priorities needing attention in the SAA reports?	Yes.	.
Was CARDS financial support to the process conditioned by the adoption of the laws?	Yes (The funds for the different programs have made the implementation of the OFA principles as a key condition and thus, indirectly, of the constitutional amendments).	Not directly (but the judicial reform was conditioned. See the section on judiciary).
Amount of the EU financial support to the reform in general:	2.2 millions (the data refers to the amount for the Secretariat for the implementation of OFA, not calculating the support for the implementation of the particular provisions of OFA (see the other sections).	-
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	-	-
Reform perceived by the IA as:	Necessary element for maintaining the peace.	Necessary for the democratization process.
The main concern guiding IA's intervention in the field:	Security.	Democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	Yes (5).	-
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.
Were the recommendations made by the IA accepted?	-	Mainly.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	-	Yes (see the chapter on the judiciary).
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	No (it was the compliance with OFA to be underlined).	Yes. (4)

Table 7: "The constitutional amendments of 2001 and 2005 in Macedonia: explanatory factors concerning the domestic level" (author's elaboration).

	OFA (2001)	Amendments on judiciary 2005
Domestic input for the change:	Present (OFA agreement).	Absent.
Domestic actors pushing for the reform:	Albanian ethnic minority.	-
Level of conflictuality of the issue:	High.	Low.
Type of conflict and main line of the conflict:	Inter-ethnic.	-
Did the issue concern the deep divisions in society?	Yes.	-
Type of the issue (salience – positional):	Positional.	X
The main beneficiaries of the status quo:	Macedonian ethnic majority.	X
The main beneficiaries of the change:	Albanian ethnic minority.	X
Is the existing status quo strongly delegitimized by all relevant actors?	No.	-
Two or more alternative solutions present?	-	-
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.	Fluid.

Table 8: "The constitutional amendments of 2001 and 2005 in Macedonia: outcomes" (author's elaboration).

	OFA (2001)	Amendments on judiciary 2005
The procedure of law drafting:	Behind the closed door (peace agreement).	Open discussion.
The main deficiency in the adopted legislation:	Institutionalization of ethnicity? (see the table 4, main text).	-
The main beneficiaries of such deficiencies:	Representatives of the ethnic groups.	
The status (2008):	Mainly implemented.	Implemented.
The EU comment in the 2008 report:	-	-

Table 9: "The blockage of the constitutional reform 2000-2006 and constitutional reform 2006 in Serbia: explanatory factors concerning IA" (author's elaboration).

	Lack of constitutional reform 2000-2006.	Constitution 2006
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	No.	No.
Was the issue part of the EU's ***key*** short-term priorities?	-	-
Was the issue part of the EU's short-term priorities or was it included among the priorities needing attention in the SAA reports?	Yes.	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.	No.
Amount of the EU financial support to the reform in general:	-	-
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	-	-
Reform perceived by the IA as:	Necessary step in the democratization process.[1]	Necessary step in the democratization process.[1]
The main concern guiding IA's intervention in the field:	Democratization.	Democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	-	Yes.
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.
Were the recommendations made by the IA accepted?		Partially (the inclusion of the international advisors only for the drafts, not for the final document).
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	-	-
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	-	Yes.[2]

1) See for example the Commission SAA report 2005 on Serbia and Montenegro where the constitutional and legal uncertainty are perceived as an obstacle for the rule of law. 2) See for example: http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=10&dd=18&nav_category=11&nav_id=215838, http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=10&dd=17&nav_category=11&nav_id=215782.

Table 10: "The blockage of constitutional reform 2000-2006 and constitutional reform 2006 in Serbia: explanatory factors, domestic level" (author's elaboration).

	Lack of constitutional reform 2000-2006	Constitution 2006
Domestic input for the change:	Present: the change of regime 2000 and delegitimization of the actual document.	Present: Regime change 2000; Delegitimization of the existing document; Independence of Montenegro; Negotiations for Kosovo; Political moment (see the main text).
Domestic actors pushing for the reform:	All (DSS).	DSS.
Level of conflictuality of the issue:	High.	Medium.*
Type of conflict and main line of the conflict:	Inter-party Old-new elite.	Inter-party.
Did the issue concern the deep divisions in society?	Yes: continuity-discontinuity, territorial organization.	The difficult issues are avoided.
Type of the issue (salience - positional):	X	X
The main beneficiaries of the status quo:	X	X
The main beneficiaries of the change:	X	X
Is the existing status quo strongly delegitimized by all relevant actors?	Yes.	Yes.
Two or more alternative solutions present?	Yes (continuity vs. discontinuity).	-
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid 2003; Stable 2004-.	Stable.

* While the constitutional reform in Serbia was actually a *very* conflictive issue, seen that it was supposed to tackle the two most difficult political issues, territorial organization and judiciary reform, here we consider the level of the conflictuality low due to the fact that the constitution actually *avoided* to face these questions. It was thus only due to the decision not to decide on these two difficult issues that the level of conflictuality diminished and made the constitution adoption possible.

Table 11: "The blockage of the constitutional reform 2000-2006 and constitutional reform 2006 in Serbia: explanatory outcomes"(author's elaboration).

	Lack of constitutional reform 2000-2006	Constitution 2006
The procedure of law drafting:	-	Behind closed doors. Intra-party bargaining.
The main deficiency in the adopted legislation:	-	Strengthening of the party control over the assembly, lack of independent judiciary, failure to specify the territorial organization.
The main beneficiaries of such deficiencies:		Political parties and the ruling elite.
The status (2008):	-	Waiting for the implementation.
The EU comment in the 2008 report:		Overall, there has been progress on adopting legislation to implement the new constitutional framework. However, further reforms are needed to ensure that the constitutional provisions, notably on the judiciary, are implemented in line with European standards.

5.THE FORM OF GOVERNMENT: ASSEMBLIES, GOVERNMENTS, PRESIDENTS AND PARTIES

"Power always has to be kept in check; power exercised in secret, especially under the cloak of national security, is doubly dangerous."
William Proxmire

The goal of this section would be to describe the forms of government established in Serbia and Macedonia in order to highlight the institutional settings in the two countries. We will assess the functioning of the legislative and the executive, the two key institutions in any representative democracy, paying particular attention to possible deficiencies in the functioning of these institutions that might hamper the process of democratization.

If democracy is a political regime "in which the individuals obtain the decision-making power through the competition for the votes of the citizens",[132] and if, to say it with Dahl, the elected officials should see their decisions put into practice[133], then the institutions with the legislative and executive power and the citizens' control over these institutions become a key of the democratic process. It is no surprise that the political science and philosophy dedicated many volumes to the problem of the accountability, responsibility and responsiveness of the ruling elite, analyzing the different institutional settings and their capacity to safeguard democracy, both in terms of the maintenance and functioning of a specific institutional asset (seen the experience of Weimar, can we argue that the presidentialism with premier is a particularly fragile institutional setting?), and in terms of ensuring the "quality" of the output the democratic procedures produces (is the parliamentarianism with the proportional electoral system more "democratic" than the presidentialism with the majoritarian electoral system? Is the majoritarian model of democracy a democratic solution for the pluralized societies?).

The impact the form of government produces on the functioning of the democratic regime was widely examined in literature (here we will only remember the works of Lijphart (1984),

[132] See Schumpeter's definition of democracy, 1954.
[133] See Dahl, 1971.

Linz (1990), Shugart and Carey (1992), to mention only some of those who made the form of government a key of their focus for understanding how democracies work). Finally, the functioning of the parliament and executive was identified as one of the keys for understanding the quality of the democratic regime established. In our representative democracies, the key question is how to ensure the accountability and responsiveness of those who are given the power to rule, which brings the institutions and procedures of the regime to the focus of the attention of the researcher. The researches on the quality of democracy therefore underlined the importance of the procedural dimension of democracy and of the functioning of the democratic institution, giving institutions and processes a key position in the analysis (on the procedural democracy and the quality of democracy, see Morlino, 2004a, 2004b). For Brusis and Thiery (2005), the quality of democracy can be directly linked to its institutional design, where the research is concentrated on how the particular institutional settings can help pass the deficiencies in the democratic regimes.

For this reason we dedicate this section to the description of the forms of government in the two countries studied. We will describe the constitutional designs in Macedonia and Serbia, to turn then to the particularities in the two countries. In Serbia's case we will underline the party control over the mandates in the assembly, strongly criticizing this solution and arguing that it contributed to the corruption of the political regime in which the decision-making power is moved from the democratically elected representatives to the oligarchic leadership of undemocratic political parties. The strengthening of the party control over the assembly and, indirectly, over all institutions appointed by the assembly (judiciary included), concentrated the power in the hands of a few political leaders, further hampering Serbia's fragile democracy and contributing to its degeneration to state capture and "feudalization" of the government as described by Pešić (2006). In Macedonia's case we will pay particular attention to the salience of the ethnic division that brought to the existence of two parallel party systems. The politicization of the ethnicity and the introduction of the power-sharing mechanisms in OFA that, according to authors like Bieber (2004), resulted in the institutionalization of ethnicity, brought to a situation in which the further ethnicization of the political debate is a profitable electoral strategy to follow[134]. We will therefore underline how the ethnicization of the politics was used to exclude the society from the decision-making process, to hide the decision making from the eyes of public and to allow the "rule of deal",

[134] See also Snyder's discussion of the perils of power sharing and the mechanisms that bring to the further radicalization of the inter-ethnic conflict in democratizing states. Snyder, 2000.

corruption and satisfaction of narrow personal interest, in some cases even at cost of the country's peace (as it was the case in Macedonia in 2001, see the section on corruption). We will also mark some of the developments that took place in both countries, mainly in increasing the transparency and efficiency of the parliament and assembly, to turn to the influence the international actors, EU in particular, exercise on the functioning of the institutions in two countries.

The role of the EU in these cases can be considered twofold. On the one hand, the EU included the increase of transparency and efficiency and proper functioning of the state institutions (parliament and government in particular) among the issues to be faced through the democracy promotion. While not making any particular requirement concerning the choice of a particular form of government (a sensitive issue tackling the very core of the national sovereignty), EU required the proper functioning of the existing institutions. We will see how in both countries the transparency in the functioning of the national assembly was successfully fostered by the international actors.

On the other hand, we should account for the influence the very process of integration into the EU might have exercised. The integration process, during which the harmonization of the domestic legislations and adoption of the thousands of the acquis should be undertaken, leaves little room to the national assemblies, moving the decision-making process towards the executive. "Turning the assembly into a rubber stamp" is an effect already identified in the literature dealing with the European enlargement towards the East[135]. Finally, as we will see, the very presence of the international actors might exercise a systemic influence on the decision makers. The presence of an international actor interested in the domestic developments also represents a resource, a potential alley or opponent, turning into a factor the domestic actors take in consideration when developing their strategies[136]. If neglected, the systemic influence exercised by the presence of international actors active in the country might seriously hamper the international actor's agenda, as it might annul the effect of the international actor's actions.

[135] See Morlino and Sadursky, 2008.

[136] On the international environment and its systemic influence on the domestic decision makers see Bozzo and Simon-Belli, 1999.

5.1. Serbia: Mechanisms of the Partitocracy

5.1.1. Description of the Form of Government

Since the 1990 constitution, the Serbian national assembly is a one-chamber legislative body made of 250 deputies elected according to the proportional system with the d'Hondt formula. After the ten years of multipartism (even though limited by the authoritarian tendencies of Milošević's regime) and the registration of more than 200 political parties, the census of 5% is introduced in 2000 in order to limit the high fragmentation of the party system. The small parties however persisted, capable to work their way into the parliament by supporting larger partners in exchange to see some of their own representatives on the list.

The constitutional and legal framework put in place gave Serbian parliament also the task of electing, dismissing and controlling the government, linking the governments to the will of the assembly's majority. Vote of confidence and mis-confidence, interpellation, questions to the government or single ministers, regular reports and the power to form the commissions to question the executive's work, all are instruments made available to the assembly in order to allow it to keep the executive accountable for[137].

As far as the executive power is concerned, Serbian political system is characterized by the dual executive, where the presence of the directly elected president and a prime minister responsible to the government induces us to classify the country as a semi-presidential system[138].

The head of the executive is a president directly elected for a 5-year mandate. As the legitimacy of the president derives from popular vote, the dismissal procedure is rather difficult: the qualified 2/3 majority in the assembly and the sentence of the constitutional court declaring the president guilty for violating the constitution represent the political and juridical safeguard of his mandate. While the constitutional court safeguards the president from the will of the assembly, the prime minister keeps the initiative and veto power in case the president tries to dismiss the assembly, creating a situation where the two institutions,

[137] See Fish 2006 for the indicators of the strength of the parliament.

[138] Please see the tables in the Appendix for the summary of the characteristics of the political system and for a comparison of the political systems in Serbia and Macedonia. On the notion of semi-presidentialism, please see Duverger 1978, also Lijphart, 1984, Sartori, 1994, Shugart and Carey, 1992.

assembly and president, are independent one from the other, even in those cases when cohabitation might create the blockage of institutions[139].

The presidential powers over the Serbian government are weak: the only power the president has is the nomination of the candidate to prime minister. The 2006 constitution changed the 1990's formulation of this power with some significant consequences: it prescribed that the candidate shall be assigned after consultation with "*parliamentary groups"*, and not as previously, *according to the will of the parliamentary majority*. The importance of this change became obvious in the first half of 2007 when different interpretations of provision were the subject of conflict between Tadić-Koštunica, and caused a deep political and institutional crisis. The formulation adopted in constitution gave the president more space to influence the election of the candidate, as it appeared to give the parliamentary groups and assembly only a consultative role (interpretation that was pushed forward by the president). However, the "duel" Tadić-Koštunica showed that the success of the president in exercising this power will depend on the distribution of seats and, as a result of Serbia's polarized pluralism type of party system, of the position the actors involved occupy in the party system.

While the elections held in spring 2007 revealed the president's weakness in maximizing his preferences in the process of government formation, those of the first half of 2008 showed the president's strength towards a future hostile government, as he is able to veto the formation of an undesired government, postpone the government's formation and, finally, thanks to the features of the party system and distribution of power, he also achieved the creation of ruling a coalition which is favorable to him. The Law on the President, adopted in December 2007, did not give further clarification of this provision, as the law only states that the president is obliged to give the mandate to a candidate "capable to ensure the election of the government". There is no clear criterion for establishing whether or not a candidate is capable to gain the assembly's support and, in the context of a fragmented party system without defined majorities, such omission increases the presidential influence in the process, turning him into an important veto point in the government's formation. Seen the short time period that passed since the introduction of the norm, it is still too soon to assess what interpretation will become consolidated in practice. The tendency registered until now, however, indicates that the president will try to maximize the possibilities offered by the

[139] On the importance of the relationship between the executive and legislative for the classification of the political system and the critic, see Elgie, 1998. Shugart and Carey, 1992, who make one of the two dimensions of their typology of political systems of the level of the president's independence from the assembly.

solution, inducing us to believe that the consolidated practice will, most likely, be that which favors the president.[140]

The legislative powers of the president are also rather weak: the 2006 constitution limited the previously existing possibility to rule by decrees during the state of war or emergency and limited powers to declare the state of emergency. The legislative initiative is not given to the president, while his veto can be annulled by the simple majority in the assembly voting the same bill for the second time. The president has no powers in budget designing, and limited powers in the foreign policy. Even though narrow, as it was shown during the period of Tadić-Koštunica cohabitation, the powers left to the president can be used by a strong politician, in a manner to exercise a significant political influence[141].

The government is guided by the prime minister that, according to the existing legislation, is not one of, but the first of the ministers. According to the constitution and Law on Government, he enjoys the discretional power in choosing the ministers (president nominating only the prime minister, assembly voting the prime minister, government and its program in block), ministers being responsible to both the assembly and to the prime minister, the prime minister having the power to "give instructions" to the ministers and to dismiss them.

The government is appointed, controlled and dismissed by the assembly. All instruments of control of the government known in the parliamentary systems are available to the assembly: individual questions to government and its members, interpellation, vote of confidence, obligatory monthly reports as well as the possibility to ask for reports on specific issues and to form commissions for examining the work of government. The short deadlines prescribed for the formation of the new government, the possibility to propose the dismissal of the assembly and the power to resign are guaranteed to the government in order to balance the powers given to the assembly.

The legislative powers of the government are large: according to the 2006 constitution, the government "designs and implements the national policy". Moreover, it is given the instruments necessary for the control of the assembly's agenda, but not the powers to protect the legislation from the amendments or to completely block the other initiators[142].

[140] For the links between the type of the powers of the president and the party systems, see Shugart and Carey, 1992, Muller and Strom, 1999.

[141] On the indicators of the presidential power in a political system see Shugart and Carey, 1992, see Tsebelis and Rizova, 2005, for the discussion on the presidential power to veto the bill. See Metcalf, 2000 for the measures of the presidential powers.

[142] See Ieraci, 2003, for the mechanisms of the control of agenda.

As far as the number and organization of ministries are concerned, according to the Serbian legislation each cabinet gives its own design and organization of ministries, making the number of ministries and their competencies a subject of the coalition agreement.

5.1.2. The Imperative Mandate

All of the above described normative mechanisms are subject to modifications deriving from the link between the parties and their deputies in the assembly. The particularity of the Serbian political system consists in the "loopholes" in the legislative framework that allowed the political parties to exercise full control over the deputies by controlling the mandates. The party control over what was supposed to be a free mandate is ensured through the legislative measures that converted the nature of the relationship between the deputy and the party from "political" to "legal" kind of relations (see Jovanović 2005, 2007), substituting the "representatives of people" with "representatives of parties" (Miljković-Matić, 2005). Until 2003 this was achieved due to the Article 88.1 of the electoral law that gave parties the possibility to take away the mandate of the disobedient deputy by expelling him from the party. After 2003, when the constitutional court proclaimed the Article 88.1 unconstitutional, the control was re-established thanks to the provisions that gave parties the possibility to assign the mandates without respecting the order of the candidates in the electoral list. This control over the distribution of mandates was used by the parties to force the candidates to sign the blank resignation from the position of deputy in order to be assigned the mandate. Finally, the 2006 constitution gave the constitutional guarantee to such practice as the Article 102 "offered the deputies the freedom" to irrevocably make their term of office available to the political party upon which proposal they were elected a deputy. Even though strongly criticized by all international and national actors engaged in the promotion of democracy, the provision is still in force, justified by the party elites as a necessary mean to fight back corruption and "deputy trade" in parliament. In practice, it was (ab-)used by governments with narrow majority in order to stay in power, to ensure the adoption of the legislation and to avoid control over the party leaders occupying the seats in the government[143], while since it was given constitutional guarantees, it became a subject to the negotiations for the

[143] As we will argue in the section dedicated to the decentralization and local self-government, the inclusion of this provision into the Law on the Local Elections annulled the effects of decentralization, seriously hampered the local democracy and the principle of the local self-government and pushed the entire decision-making process on all levels of government in the hands of the few party oligarchs.

government formations, so as to increase the credibility of the commitments taken by the coalitional partners.

In order to make the position of the deputy, emptied of political influence, more attractive, the political parties on the other hand offer their deputies, beside high wages and economic incentives, positions in the managerial boards of different state-owned companies which are highly economically profitable positions. Such exchange is allowed by the Law on Conflict of Interest adopted in 2004 that does not consider the deputies' involvement in managing the public and private companies as a conflict of interest (see the section on the corruption).

The party's control over the deputies' mandate modified the functioning of the mechanisms of horizontal accountability and had a strong impact over the executive-legislative relationships in Serbia. It brought the legislative and the assembly majority under the complete control of a narrow party leadership (a seriously worrying solution for Serbian democracy, particularly seen the very low level of democracy within the parties, see Goati, 2006), resulting in a situation where the only threat to the government is from within, not from outside the ruling coalition, no matter what kind of scandals the ministers get involved in. In a situation where the president doesn't have any de iure, while the parliament doesn't have de facto powers to dismiss the government, the stability of the government depends on the stability of the ruling coalition, and thus on the party and electoral system.

Already during the '90s, the Serbian party system was considered fragmented (too much fragmented even for the newly born, not institutionalized party system), while at the end of the '90s the domestic analysts started to describe it as a system of polarized pluralism, even though it still wasn't institutionalized and, according to Sartori's own criteria, not classifiable party system[144]. This tendency towards polarized pluralism after the change of regime finally came into light by establishing the centrifugal competition and the three-pole system, with extreme positions on both ends, and a centre, represented by DSS. The large ideological distance between the center and the two extreme poles, combined with the strong antagonism between SRS and the international community, produced limiting effects on the uncertainty of the electoral competition and created what Sartori labeled the "peripheral turnover", resulting in irresponsible opposition (SRS) and equally irresponsible central governmental actor (DSS), strongly motivated to avoid the establishment of mechanisms of accountability.

Due to the polarization and fragmentation of the party system, the governments in Serbia were always coalitional, characterized by narrow majority, usually several political partners and

[144] See Goati 1992, 1994, 1999, 2000, 2001, 2002.

large ideological distance between the coalitional members. Usually, the government depends not on the agreement between two larger, but also most distant parts of coalition and on small coalitional partners, but sometimes also on parties with one or two candidates, who succeeded in getting to the parliament by forming an electoral coalition with bigger parties. This makes the control parties keep over their deputies a crucial mean in the negotiating process, as well as later, during the ruling period. During the negotiations over the ruling coalition after the 2008 parliamentary election, the control of blank resignations was also subject to the intra-party negotiations, when the control of the deputies became a mean for increasing the credibility of the commitments made in the negotiation process.

The peripheral turnover, the coalitional governments and the polarized pluralism type of system exercised a negative influence on the responsibility of both opposition and, even more important, of the governing parties[145]. Combined with the concentration of power in the hands of the party leaders and lack of mechanisms for the accountability, such setting opened the possibility for abusing of power and produced what some authors called "feudalization of the Serbian government": the ministries became the spheres of influence, divided between parties in a manner that the entire sector, controlled by a particular ministry, became a "fief" belonging to the coalitional partner[146]. Unlike what was the case in the first Đinđić's government, where junior ministries were assigned so as to "keep tabs on partners", in both Koštunica's governments the principle of "mono-color ministries" prevailed. The coalitional agreement distributes, according to strength, the ministerial portfolios and all positions in that field of policy (manager and members of the manager boards of all civil service agencies, all sub-units of the administration of that ministry included) to one political party that gains full control over a certain sector of policy. The political party's extremely strong control over the MP's and over the policy area means that in case the party's interest in the field is not respected, or in case of interference, the party will use its MP's to overthrow the government. The non-interference in the other party's fief (unless necessary for establishing own influence) thus became a principle to follow in the relationship between the coalitional partners. Such non-interference was the approach the government adopted even in those cases when the ministers were accused of corruption and abuse of power against which strong evidence was collected. Politicization of the judiciary, party control over the assembly and the principle of

[145] See Sartori 1972 on the effects polarized pluralism has on the responsibility of the ruling elite.
[146] On the feudalization of Serbian governments see Pešić, 2006.

non-interference safeguarded ministers involved in a scandal from any legal or political consequences and allowed them to continue their mandates[147].

While Serbian governments are relatively immune to the outside control, they are extremely vulnerable to the turbulences in the relationships between the political parties caused by their vote-seeking strategies and the shakes caused by external events and "hot issues". In Serbian recent history, a situation of deadlock in all institutions (from judiciary to the assembly and administration) caused by conflict of the parties over some issue it is not rare: all activities and reforms, procedures and legislations are suspended until the conflict is solved, as they all become a potential resource to use in the negotiations.

5.1.3. Developments

Beside the control of the political parties, other shortcomings Serbian parliament needed to face immediately after the instauration of the democratic regime in 2000 were:

- The lack of transparency;
- The lack of administrative capacity and low efficiency, due to the shortage in staff, training, in technical and financial means;
- The lack of effective control over the government;
- The lack of adequate public consultation in the legislative process;
- The recurrent blockage due to political conflict between the deputies, obstruction by the opposition, opposition parties leaving the parliament, the low rate of presence of the deputies in sessions causing the lack of quorum and delays in work.
- The lack of political, and in some cases even basic, culture of the deputies.

While there were no positive developments as far as the control of the political parties over the deputies is concerned, and the lack of specialized staff and inadequate behaviour during the parliamentary sessions are still a serious weakness of the assembly, the transparency, working conditions, possibility to exercise control over the government and the competencies of the committees in the legislative process are all considered a positive change. We can consider the adoption of the new procedures of work in the assembly in 2002, the Law on Access to Information of Public Interest in November 2004 and the amendments introduced to the working procedures of the assembly (especially those adopted in June 2005 that

[147] See the reports of the commission for the fight against corruption.

increased the committees' competencies in the decision-making process) as particularly significant changes introduced in the work of the parliament.

The raison d'etre of these changes differs as we pass from transparency to efficiency issues. In the case of transparency, the efforts and measures introduced aimed to change the negative picture citizens had of the parliament. The negative assessment and lack of trust in this institution gave the impetus for the actions undertaken for increasing transparency and initiatives of bringing the parliament closer to the citizens (web presentation of the parliament with the very data base dedicated to the legislations, open parliament initiative, students' visits to the assembly and divulgation of informational materials etc).

The introduction of measures aiming to increase the transparency of the functioning of the legislative did not produce the desired effects as far as the citizens' view of the institution is concerned. While transparency really increased[148], the lack of trust remained a reality. The number of citizens that have full trust in legislative was only 8% in 2005, while citizens having full or at least some trust in this institution accounted for 20%, making the parliament the less credible of all institutions (judiciary 29%, government 35%, president 43%, military and police 44% of citizens expressing full or some trust in these institutions). Moreover, the level of its credibility didn't change much since 2000: while the level of trust seemed to increase (from 18% with full or some trust in 2000 to 28% in 2005), the level of mistrust also increased (from 59% in 2000 to 65% in 2005). The harsh criticisms advanced by the citizens remained unchanged: the lack of political culture, of responsibility, corruption and laziness, and the belief in the complete irrelevance of the national assembly in the legislative process being the most often underlined issues in the interviews[149].

As far as the changes introduced in the working procedures are concerned, they were mainly the product of the effort to increase the legislative capacity and efficiency, through the strengthening of the committees, and especially by lowering the requirements for the quorum in order to avoid the assembly's blockage. The decision on the parliamentary procedure in 2004 also regulated the question of the parliament's control over the government, praised in

[148] Working reports of the assembly as well as of the assembly's committees are published, the web presentations offer access to all legislations adopted and in procedure, the reports on the sessions of the parliament and committees, information on deputies, parties and their activities. The information is not always issued in a transparent manner (the statistical and methodological inconsistencies of the assembly's report makes it almost impossible to use for analytical purposes and does not give the possibility of time-cross comparison), but the situation did improve since the initial period after 2000).

[149] The most illustrative is the statement that "the assembly is like a soap opera, it is a circus, and the deputies are worse than children. They are just wasting our time and money." See Golubović, Spasić, Pavićević, 2003, p. 67.

the reports as a positive step. This seems to be one of the changes introduced in the research for external legitimacy, while the real intention of the legislator was to make the provision non-operational. The actual control of the assembly over the government did not increase, as the deputies still lack the liberty from their political parties to exercise effective control of the government. The unconstitutional manipulation of mandates in order to create a parliamentary majority in the moment a small party of the ruling coalition withdraws its support to the government, in August 2005, is a clear sign that the intention was clearly not to increase the assembly's control over the government.

As far as the organization of the executive is concerned, it underwent almost no change since 2000. The Law on the Election of the President made the election procedure simpler and the conditions more realistic and easy to meet (see the section on elections), while the constitutional reform changed the procedure of dismissal and took away the exclusive presidential powers during the state of emergency, powers that were considered undemocratic and that were abused by Milošević's regime.

5.1.4. International Actors and the Form of Government in Serbia

As far as the actions of the EU in the field are concerned, the tables in the appendix bring the priorities concerning the functioning of the assembly and executive expressed in the EU reports and partnerships with Serbia (Serbia and Montenegro). The suggestions advanced by the EU mainly concerned the legislative, and remained at the level of recommendations rather than conditionality, as in no case there were specific requests concerning the assembly or the executive expressed as short-term or key priority. Through the socialization channel and financial support, some influence was exercised over the assembly, mainly in increasing its transparency and capacities. The socialization process involved not only the EU, but also other international actors, OSCE, CoE, the national governments, the USAID as well as other agencies. The EU directly provided the assistance and undertook the socialization by including the Serbian parliament in the network of the European assemblies, and it also took indirect steps through the actions of member states. Finally, the EU's financial contributions were also significant, improving the working conditions in the assembly.

The EU did not make any concrete requirements concerning the design of Serbian executive, aside from the call made in 2003 to Serbian "government and parties to focus on the reform responsibilities rather than on the party's political issues" (EU annual report on Serbia and Montenegro, 2003). Criticisms of party control over the parliament, of executive

influence over the judiciary, of politicization of the civil service and of all other aspects and mechanisms of Serbian "partitocracy" are expressed indirectly in the paragraphs about those institutions where the parties were exercising their influence.

While the official recommendations in the questions of the constitutional design are almost absent, the unofficial pressures the EU exercised on the government's formation were very strong, with important implications for the functioning of the Serbian institutions (and, as we will argue in the conclusions of this work, for both the process of democratization and of Serbian integrations in the EU).

These pressures were mainly caused by the existence of a strong nationalist party (SRS), hostile towards European integration and favoring the "shift towards the east" (Russia, China) in Serbian foreign policy. The presence of such actor, perceived by the EU as the main threat to Serbian democracy and openly threatening all EU's potential interests in Serbia[150], created a situation in which the colors of the ruling coalition became of crucial importance for the IA. Since the very beginning of the conflict DSS–DS, EU was pushing and requesting for re-conciliation and conflict settlement in the name of values such as reform, democracy and progress. As this split made the agreement between the "pro-European" parties difficult, both 2004 and 2007 government negotiations were marked by strong pressures coming from Brussels aiming to keep the nationalists away from power and ensure the creation of a pro-European government. In the May 2007 crisis, the election of the ultra-nationalist Nikolić to president of the assembly, due to Koštunica, was perceived as a security threat by all western actors, who started to make pressures, using conditionality, remuneration and threat to ensure the creation of "pro-democratic government". The threat to end cooperation with Serbia was combined with the delay in signing the visa agreement, due to "technical problems" and with the fall of Belgrade stock market, that demonstrated the preference of the capital for the stable settings the EU is conceived to guarantee. At the same time, the requests for the creation of a "pro-democratic" government and the promises about the re-opening of the SAA negotiations as soon as the "pro-European government is established" were coming from the EU, showing Brussels' preferences clearly to both Serbian leaders and citizens[151].

[150] The nationalists are perceived as a security threat for Europe, due to the role Serbian nationalists had during the Balkan history in the Nineties. Moreover, SRS' political agenda is strongly antagonistic towards the EU, calling for "eastern" orientation in Serbian foreign policy and questioning the western investments in Serbia, thus adding the threat to the potential geo-strategical and economic interests of the EU in Serbia to the already mentioned security threat they are perceived to represent.

[151] The EU influence on the government formation doesn't consist only in the involvement considered "necessary" for maintaining of the "pro-reformist" parties, it also, even though in a less official manner, tackles the distribution of portfolios. The May 2007 crisis revealed that, during the negotiations ongoing between DS

How shall we assess the role of the EU in the creation of "pro-democratic" ruling coalitions and in "keeping the ancient regime away"? It is a rather difficult task: in the extent to which nationalists represent a threat to Serbian democracy, such intervention surely contributed in maintaining the democratic regime. But at the same time the influence EU exercised over the domestic distribution of power produced a systemic effect, modeling the preferences and strategies of the actors present. It thus became a mechanism that further strengthened the central actor of the political system, strengthening the already negative features on the electoral accountability produced by the polarized pluralism type of system. In the conclusions of this work we will argue that it was precisely the systemic, undesired effect of the influence the EU exercised over the domestic distribution of power to model Koštunica's preferences in both democratization and integration process.

5.2. Macedonia: One Assembly, two Worlds

5.2.1. The Form of Government

The Macedonian national assembly is made of one chamber with 120 deputies elected with the proportional formula (according to the constitution the number of deputies goes from 120 to 140, yet in all 5 legislations the number of deputies was 120).

In the semi-presidential design of Macedonian political regime, the assembly is given a large range of powers in some provisions, unusual even for the semi-presidentialism, which make the Macedonian case one that, in different scales of regime types, is classified very near to the parliamentary systems[152]. The particularity of Macedonian national assembly, when compared to other political systems, is the provision according to which only the assembly can dismiss itself, thus making the parliament responsible only to itself, which then results into very stable legislatures that, except in 2008, always finished their mandate. According to the domestic authors, this provision is "an obvious disadvantage for the proper balance of powers between the parliament and the executive that could involve the electoral body as a final arbiter in matters of substantial disputes on policy and of legitimacy. The lack of this essential element of parliamentary model is not to be concerned as a tendency towards presidential one, but

and DSS, the EU officials were insisting on DS keeping control over the security sector. This statement was then used by Koštunica (recently more and more shifting towards nationalism, also negating his "pro-European" orientation in some cases) in the political struggle against DS, in some moments even used to justify Tadić's betrayal by supporting SRS.

[152] See Kasapović, 1997.

rather as a relict of the previous "assembly" or council model and a tendency towards predominance of the parliament over the executive." (Spirovski, 2001, p. 2. On the dangers of Macedonian parliamentarianism see also Todorovski, 2008). This self-accountability of Macedonian assembly was also identified as a source of lack of responsibility from both the parliament and, indirectly, the government, resulting in inefficiency, deficit in functioning and lack of consultation with the electorates and civil societies registered. The rules of procedures of Macedonian assembly adopted in July 2002 sought to solve the problems by imposing higher fines for the deputies not attending the sessions[153].

As another resource of strength of the assembly towards the president we find the simple procedure for overpassing the presidential veto where the president can veto only the laws that were not adopted by the 2/3 majority, and even then, the majority in the assembly is enough to overpass it. The requirement that the presidential decree shall be signed by the president of the assembly as well, and the position of the head of the executive given to the government rather than to the president, further weakened the Macedonian president.

The presidential powers in the process of the government formation are also very weak, the power to entrust the candidate to prime minister from the party that gained the majority being turned into purely symbolic by the capacity of Macedonian party and electoral system to create clear majorities in the assembly. The government formation, control and dismissal are entrusted to the assembly making the president's role in the process symbolical. As it is usually the case with the semi-presidential systems, in the cases where the parliamentary majority is of the same party as the president, the presidential influence over the government formation depends on the intra-party dynamics. During Gligorov's presidency, while he enjoyed the support of the assembly's majority as well, or in the period of the "expert, non-political government in 1991, the role of the president was decisive and the system was functioning as a presidentialism. During the first half of Trajkovski presidency, 1999-2002, as the government was headed by Georgijevski, a president of VMRO, the balance was shifted towards the prime minister. At the same time, during the periods of the cohabitation, the confrontation between the president and prime minister are significant, and president is limited to play a far less influential role. The high levels of the independence of the president and assembly, in which the parliament can not be dismissed, while the impeachment procedures gives the veto power to the constitutional court, appears to be of enormous importance in these periods of cohabitation. The strong conflictuality between the SDSM and

[153] See Grabev – Damjanovska and Jovevska, 2002.

VMRO clearly showed the perils of such system, resulting in serious blockages both in the period of Gligorov-Georgijevski cohabitation (1998-1999)[154], and during the last cohabitation Crvenkovski-Gruevski. The government headed by Gruevski does not even recognize Crvenkovski as the president, the members of the incumbent VMRO call him "mister Crvenkovski", refusing to refer to him as the president, the ministers refuse to be present in the parliament during the presidential speeches, and in many instances (like the re-establishment of the diplomatic relations with Serbia after a two months crisis provoked by Macedonia's recognition of Kosovo, or like in the last turn of negotiations over the name dispute with Greece) the lack of cooperation resulted in the internal political crisis, mutual accuses and blockage of the institutions[155]. Such situation brings to a series of conflicts between the ruling and oppositional parties, which than often bring the president to use discretionally his own powers (as for example Crvenkovski's amnesty to the party-fellow Zaev, accused of corruption and abuse of power in summer 2008[156], or similar Trajkovski's amnesty to the Dimovska, accused of the tapping affair[157]), and induce the opposition to block the assembly (in the history of Macedonian parliamentarianism the boycott of the parliament by the opposition is often used by the Macedonian, as well as by the Albanian parties).

The assembly is given a wide range of instruments to control the government, which gives further strength to the assembly in the balance of power between the executive and legislative. The investiture vote (with a possibility to influence the government's composition through the individual vote for the ministers), the vote of no-confidence (both to the whole government and to individual ministers), the interpellation procedure, the deputy's question, the regular reports to the assembly, survey committees, all these are the instruments the assembly can use to exercise its function of control over the government.

While control and questioning of the ministers were widely used (only in a one-year period, from November 2005 to December 2006, 230 deputies questions were made, compared with

[154] On cohabitation Gligorov – Georgijevski, see Spirovski, 2001.

[155] I thank professor Lidija Hristova for drawing my attention to cohabitation as a source of instability. For the conflict president-government on the name dispute, see: http://www.utrinskivesnik.com.mk/default-mk.asp?ItemID=1E10F8337830FC4A9B1BD4EE96B5EE59, http://www.utrinski.com.mk/?ItemID=9E2CC11ED9E33544BF7AA8DDBC328639, http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=09&dd=30&nav_category=167, on the conflict over the reaction on Tadić's call to Macedonia to send a new ambassador to Belgrade, see: http://www.politika.rs/rubrike/Svet/Skoplje-bira-diplomatu-za-Beograd.lt.html, http://www.pobjeda.me/citanje.php?datum=2008-11-17&id=153113.

[156] See http://www.setimes.com/cocoon/setimes/print/bs/features/setimes/articles/2008/09/22/reportage-01, http://www.naslovi.net/2008-08-04/politika/abolicija-kao-drzavni-udar/767305.

[157] See Gaber-Damjanovska and Jovevska, 2003.

138 for Serbia in a three-year period from 2003 to 2006[158]), the power to dismiss the government was almost never exercised (except for the first, "expert" government, formed by non-political experts in 1991 that, not sharing any political powers, was voted the non-confidence as soon as it got in between the president and the assembly, see Spirovski, 2001). Macedonia, the same as Serbia, represents an important example for studies concentrating on the proper manner of defining the concept of "change in government". The discussion of "what shall be considered a change of government", that in literature was given different answers ("change in the figure of the prime minister", "change of the coalitional partners independently on prime minister changes", "change of any component of the government"[159]), finds its empirical relevance in our two cases.

Thus, if we take Macedonia for example, we can notice how, except for the first, expert government and for the fourth legislature, Macedonian prime ministers have enjoyed full terms in office, representing highly stable governments. During the fourth legislature, we can count five changes on the position of prime minister (three if we do not count Šekerinovska's mandate, who exercised the role of acting PM twice while waiting for the appointment of the new prime minister), while the changes in the ministerial positions were minimal.

Yet, if we consider any government's reshuffle as a change of the government, in the third legislature, that previously appeared a stable, full-term government for the four years headed by Georgijevski, we can count *seven* reshufflings of the government, some of which including also the creation of a large coalitions of the national unity.

Again, in none of these cases it was a national assembly to vote a non-confidence to the government, even though these cases were usually accompanied by the internal crisis in the ruling coalition either due to crisis among the partners, or to crisis inside the parties, and the consequential government reshufflings were products of the newly negotiated balance, where the parliamentarian majority was used only as a rubber stamp to give legitimacy to the agreements achieved among the parties leadership.

The rubber-stamp nature of Macedonian national assembly also emerges from the analysis of the data concerning the deputies' question, deputies' legislative initiative and the time for discussing the bills. The deputies' question is used exclusively by the opposition parties, while the legislative initiative of the deputies is successful only when coming from the deputies of

[158] Data source: The report on functioning of Macedonian national assembly 2006, the Report on functioning of Serbian national assembly, December 2006.

[159] For the different criteria for counting the government formation, see Muller and Strom, 1999, p. 12.

the ruling coalition (about 10% of the adopted legislation in the period November 2005 – June 2006 was proposed by deputies, compared to 2.3% for Serbia. In all cases the deputy proposing the legislation was from the ruling coalition, bills proposed by the oppositional deputies all being refused).

An efficient legislative activity (133 laws examined, 104 of which adopted in the 6-month period November 2005 – June 2006, represent nearly half what Serbia's assembly adopted, which is 260 laws, in the three-year period January 2003 – January 2007) is combined with a tendency to use the "shorter" legislative procedure. The number of laws adopted in the ordinary procedure represents only 12.5% of the total legislation adopted[160], while, if we compare the number of documents examined in the assembly (242 documents examined in November 2005 – June 2006) with the duration of the sittings (400 hours, 30 minutes), we can notice a very low average for the discussion dedicated to the single documents adopted (1.8 hours)[161].

As the process of the integration with the EU goes on, and as the packages of laws aiming to bring the national legislation in line with the EU standards and with the acquis are prepared, the whole decision-making process is further shifted to the government that became the crucial actor in the legislative process. The NGO representatives underlined that the law drafting procedure in the government became more and more important, leaving the assembly with almost no influence on the legislation content as almost all legislation is now adopted by the shortened procedure with only one reading in the assembly[162]. This de facto strengthening of the government's influence vis-à-vis the assembly is thus an interesting phenomenon of Macedonian parliamentarianism, where the practice registered in the reality is far from the intention of the fathers of Macedonian constitution whose intention was to create a strong, independent and influential national assembly.

5.2.2. The Assembly in the Setting of Institutionalized Ethnicity

The particularity making Macedonia's parliamentary and political life difficult is the nature of its fragmented party system, divided on ethnic lines in two ethnic party "sub-systems". We

[160] Only 13 out of the 104 laws were adopted in the ordinary procedure, 51 laws were adopted in the "shorter" procedure, 11 in the urgent procedure and 29 ratified. The main difference between the "shorter" and ordinary procedure lies in the time the deputies are left to get familiar with the materials for the session: "shorter procedure" means that the 10-day period, from the moment the materials and agenda are delivered to the deputies until the session itself, is shortened. Urgent procedure means that as soon as the urgent procedure for a law proposal is approved by the assembly, the law is scheduled on the agenda.

[161] Data from the official reports issued by the National assembly of Macedonia, 2005 – 2006, 2006.

[162] Interview with Klekovski, August 2008.

can thus find the majority-Macedonian parties with a rather high potential for forming electoral coalitions (often aggregating the minority parties of Turks, Bosniaks, Serbs, Bulgarians, Greeks and other minorities) and on the other side the Albanian minority parties that create another party sub-system, not incline to forming cross-ethnic coalitions[163]. Macedonia's party system is further organized around what can be labeled the left-right dimension, with two bigger parties, VMRO and SDSM, representing the fundaments of the center-left and center-right political block. However, attention should be paid to the fact that the "left" and "right" in Macedonia, and particularly, the left and right orientation of SDSM and VMRO are quite disputable. While VMRO shows a clear inclination towards the rightist, more nationalistic rhetorics, it still includes some economic solutions typical for the left, a situation that makes it difficult to position the party according to the classical meaning of the left-right as dimension covering *both* social and economic issues[164]. The positioning of the SDSM poses even stronger controversies. As reported by Macedonian author recently undertaking the research on the political identities of the electorate and parties in Macedonia, the SDSM has some problems with its ideological identity. In the interview with professor Hristova it was underlined that the positioning of the SDSM is problematic, the party even experiencing difficulties in offering a comprehensive party program. It is however usually considered to be the party of the "left-center", a classification deriving mainly from its heritage (previous communist party), and deriving from its more tolerant, civic-oriented approach to the ethnic questions. Summarizing the data from the research of Laver and Benoit, we can see how the dimensions in which the SDSM and VMRO were positioned in a manner to sign some significant ideological distance are: decentralization (SDSM 6.9 – VMRO 12.1), nationalism (SDSM 6.5 – VMRO 17.5), religion (SDSM 18 – VMRO 4.2), urban-rural (SDSM 7.1 – VMRO 14.1), social (SDSM 8.7 – VMRO 17.3), and, obviously, the approach towards the former communists (SDSM 3.8 – VMRO 14.8). We can notice how the conflict between the two parties is structured on the dimension the Laver and Benoit labeled "social liberalism vs. conservatism", rather than on the classical conception of the left-right defined in economic terms. It is interesting to notice, however, that, according to Laver and Benoit's data, in the most salient dimension of politics the two parties share similar positions: EU

[163] See Gaber – Damjanovska and Jovevska, 2001.

[164] On the meaning of the left-right and the different "content" the notions of the left and right might assume in different countries it is helpful to consult the rich literature existing on measuring the party positions and discussions on which dimensions do contribute to the "left-right" collocation. See for example Laver, Benoit, e Garry, (2003), Franzmann e Kaiser, (2006), Gabel, e Huber, (2000), Budge, Klingemann, Volkens, Bara, Tanebaum, (2001).

membership (SDSM 18.5 – VMRO 17.4) and privatization (SDSM 13.6 – VMRO 16.1). Similarly, we should also be careful with the distance between two parties registered on the dimension "decentralization": seen that in the period the data were collected the SDSM was the incumbent party and decentralization was among the most salient issues on agenda, VMRO strongly opposing the Law on Territorial Organization, the positioning reported by the domestic experts included in the survey might have been biased on this dimension.

The several small parties, entering and exiting the party scene, complete this difficult puzzle, many of which surviving only thanks to the adhesion to one of the two blocks. The ideological baggage of these parties is even more difficult to assess, as there were even the cases of the former left-wing parties entering in the "right-wing" coalition and vice versa,[165] creating difficulties not only in assessing these parties' ideological positions, but also making the coalitional blocks a tricky indicator of the bigger parties ideological positioning. Combined with the trend to fragmentation of Macedonian party system (still active, see Gaber Damjanovska and Jovevska, 2006), is an "anomaly" identified by some domestic authors according to which, in a country with one of the most favourable electoral systems for the small parties, such trend, created by the electorate's almost "irrational" strategic voting, produces the strengthening of the big parties and the weakening of the small ones[166].

The ideological distinction in the Albanian block is even more confused, as the competition between the two main parties, DUI and DPA, is mainly based on valence (rather than positional) issues, mainly following the logic of directional (and not spatial) competition[167]. The intensity of the preference and its salience become crucial element of the electoral strategies, producing a situation in which, rather than moderating, candidates are motivated to radicalize their requirements and discredit the opponent in order to gain the image of credible protectors of the Albanian national interests. The "Albanian question" prevails in the electoral campaigns, while the economic issues are hardly mentioned in the party programs, making the positioning of the Albanian parties on a left-right scale very difficult[168]. With this precaution we can distinguish between the DPA, born as the radical

[165] Thus, Gaber-Damjanovska and Jovevska (2006) when commenting Gruevski coalition claim: "It is obvious that the political configuration of the parties gathered around Nikola Gruevski is quite a diverse one, so if one excludes the common party interest to get a share of power, negotiations seemed quite a difficult task to accomplish… Odd combination with VMRO seems the coalition with the New Social-Democratic Party that derived from SDSM, and maintained its left provenience." (Gaber-Damjanovska and Jovevska, 2006, p. 5).

[166] See Saveski, 2005.

[167] For spatial theory see Downs, 1957. For a criticism of the spatial theory and for the valence issues see Stokes, 1963. For the directional theory of issue voting see Rabinowitz and MacDonald, 1989.

[168] Kadriu, 2008.

Albanian nationalistic party, placing itself on the right, and DUI, a party formed by the leader of the terrorists involved in the 2001 violence, whose positioning is less certain due to its effort to underline their "civil, less nationalistic, pro-European orientations", and to position itself on the center/center-left[169]. An unwritten practice was established, according to which the winning Macedonian party/coalition, even when with enough support in the assembly to rule alone, always includes a party of the ethnic Albanians in government, and in this practice until 2008 the coalitions formed generally respected the collocation on a left-right scale between the Albanian and Macedonian partners, SDSM choosing PDP and after 2001 DUI, and VMRO forming a coalition with DPA[170]. It is difficult to claim that such coalitions were based upon the ideological positioning of the parties, seen the general difficulties in positioning the Macedonian political parties we discussed above. However, it is interesting to notice that, for example, Kadriu collocated DUI on the center-left, while Laver and Benoit positioned it on the center. In any case, the DUI appears to be slightly on the "left" to the DPA. Particularly, some of dimensions dividing the SDSM and VMRO also see the collocation of the DUI and DPA in a manner that makes DUI the less worst choice to the SDSM and DPA more attractive to VMRO (so, in the dimension of nationalism, DUI scores 11.1, DPA 15,9; religion: DUI 9.7, DPA 4.8; urban-rural: DUI 13.5, DPA 14.8; former communists: DUI 9.1, DPA 11.6; social: DUI 15.7, DPA 18,7). It is evident that while there is almost null ideological distance between DUI and DPA, however, DUI in almost all dimensions in which SDSM and VMRO are taking a distant positions assumed the position slightly nearer to SDSM. To this, the personal animosities, particularly between DUI and VMRO should be added. As Gaber-Damjanovska and Jovevska (2006) underlined, "the hardest potential coalition mouthful for Gruevski is DUI, as VMRO was very vigorously against this party when it was in power, commenting on the former crisis situations, objecting most of the systemic change performed for harmonization of the system with the Framework Agreement, opposed the amnesty of UCK fighters and objected the position this party got afterwards in government. What's more, VMRO would find it quite hard to explain to its most committed voters how potential cooperation with DUI may be achieved." (Gaber-Damjanovska and Jovevska, 2006, p. 6).

[169] Thus, in the Laver and Benoit data set, the party seems to be placed on the centre, while Kadriu, 2008, positions the party on the left-centre. While it is difficult to position the party in an "absolute" sense, we can however claim that DUI is to be positioned on the left if compared both to his Albanian opponent DPA and Macedonian centre-right party VMRO.

[170] As far as Laver and Benoit's collocation of DUI at the centre is concerned, we might question to what extent such collocation was a product of the fact that DUI was in the coalition with the centre-left SDSM.

Yet, in 2008 such coalition between VMRO and DUI was created (mainly as a product of the strong pressures coming from DUI for the "vote of the Albanians to be respected", that during 2007 systematically boycotted the institutions on all levels creating a significant blockage of the political system. See also further, see the section on constitutional framework, see the section on minority rights). While the impact of this "marriage" for the analyses of the left-right positioning is low, seen the inadequacy of the left-right scale for understanding the Macedonian political spectrum as we described above, it is an important sign of the emerging new potential trend: the one of the introduction of the "key" for the creation of the ruling coalition according to which the winners from the two ethnic blocks should both be included in the government. The inclusion of such provisions would bring to the further ethnicization of the process of the government formation and it is seen by the domestic authors as a step before the creation of the non-territorial ethno-federation (see Gaber-Damjanovska and Jovevska, 2006). As these two authors underlined, since the independence in 1991 the practice to include an ethnic Albanian party was consolidated, while the choice of the party to include into the government was a matter of the will of the winning party, with traditional partnership, program closeness in positions and/or daily pragmatic politics being the key criterion[171]. Such practice then allowed divided ethnic groups to identify common interests, or at least their ruling elite to bargain for the division of portfolios, allowing the political cleavage to "soften" the ethnic division between the two blocks, creating links between the Albanian and Macedonian party systems. DUI's insistence on "respecting the Albanian vote", is shifting the consolidated practice of compromise into an unwritten *rule* according to which the ruling coalition *must* include the *winner* from the Albanian block. Such solution, if really established, would undermine any possibility for the social, economic or whatever interest base to offer the identification alternative to the ethnic one.

DUI's capacity to force such reinterpretation of the previously established practice was mainly a product of the following three factors that joined together to increase this party's bargaining position. First of all we should account for the DUI's strength in the local governments. Seeking to press the VMRO-DPA government, DUI withdraw its majors from the association of cities and municipalities (ZELS), threatened not to use the Badinter rule in the municipalities were ethnic Albanians were in majority and used the local governments to

[171] In 2006 the electoral victory of VMRO was celebrated by the supporters of the Albanian party DPA, showing the presence of a certain level of ideological, left-right identification serving as glue between the two divided ethnic groups. Such event clearly testifies the existence of the *expectation* that the right-wing VMRO would include the Albanian right-wing DPA in the ruling coalition.

criticize the government creating a serious delay in the process of decentralization (see the section on decentralization). It also tried to obstruct the adoption of the Law on Police (see the section on security) and afterwards it declared it will not comply with the law and obstructed the appointment of the heads of police in the 16 municipalities controlled by DUI. Their requirements were partially backed by the argumentation that SDSM used in 2002 to justify the coalition with the former NLA fighters, when the party claimed that such coalition is unavoidable seen that DUI represents the strongest Albanian party[172]. In 2006, the international community initiated to press for such solution, unofficially calling Gruevski to include the biggest Albanian party in the government. Finally, the opportunities created by the Badinter majority introduced by the OFA, a mechanism that gave the ethnic minority the veto power in a series of issues and that made the party controlling most of the ethnic minority's vote a strong stakeholder[173], further increased DUI's bargaining position. The "Badinter majority" is a system of qualified majority, where the decisions are taken by the absolute majority (which might be the ordinary or 2/3 qualified majority in the assembly) within which the majority of the representatives of national minorities must be included. The issues to be decided by the "Badinter rule" are defined by the OFA agreement and by the constitution, the council for inter-ethnic relations being given the power to decide in case disputes about the procedures arise. As it was a source of continuous conflict between Macedonian and Albanian political elite, the question was recently settled by the Law on the Committee for the Inter-Ethnic Relations (adopted in 2007), prescribing a list of more than 40 laws requiring the double majority (see the section on the minority rights). The conflict still persists, as the process of ethnicization of politics as a main source of power for the Albanian leaders induces the ethnic minority to maximize its requirements (the "May" agreement, which further increases the autonomy of the Albanian minority, is an illustration of this trend that brings under continuous reexaminations the "political agreement" upon which Macedonian democracy should resign). Rather than creating consensual democracy, the power-sharing mechanisms introduced into the Macedonian political system appear to contribute to the institutionalization of ethnicity, exposing Macedonia to the never-ending problem of the ethnic divisions with negative effects produced on democracy by nationalism[174].

[172] See Gaber Damjanovska and Jovevska, 2006.

[173] The more votes of "the Representatives claiming to belong to the communities not in the majority in the population of Macedonia" a single party controls, the stronger is such party's bargaining power in all issues requiring the Badinter majority.

[174] On OFA, power-sharing mechanisms, May Agreement and their impact upon the inter-ethnic conflict in Macedonia, see Lebamoff and Ilievski, 2008.

As "consensus" became impossible to reach (seen the incentive of ethnic Albanians to maximize their requirements) and "control" was neither an acceptable nor possible policy option, Macedonia was left with nothing but "exchange" as one of the three mechanisms that according Hislope can ensure the inter-ethnic peace. Indeed, in his work about the "causes of the inter-ethnic peace", Hislope (2003) identifies the "exchange" in the "informal, spontaneous self-interest of political actors and everyday people who find cooperation and exchange more beneficial than confrontation" (Hislope, 2003, p. 6), and corruption and clientelism in the mechanism used by the elite "to grease the wheels of inter-ethnic coalition government" (idem, p. 10). Corruption therefore became an "accommodating device that helps otherwise implacable foes maintain cordial relations" (idem, p. 10).

The nationalism and the ethnic rhetorics were used to move the decision-making process from the assembly and public to closed doors behind which to hide the logrolling deals between the narrow elite dividing the spheres of interest. The ethnicization of the issues is used by the political elite, both Albanian and Macedonian, to legitimize the exclusion of other groups from the decision-making process. In the name of the "peace and stability of the country" and in order to "find a solution for the difficult problems of vital interest for the ethnic groups", the few leaders distribute the state resources among themselves in "back hall" agreements[175]. This brings to a dislocation of power from the institutions to the narrow political elite, the narrow leadership of the political parties becoming the centre of the decision-making process[176]. Similarly to what was registered in Serbia (only realized with different mechanisms), here again we find the principle of the "*rule of deal*" replacing the principle of the rule of law. Linked with this is the parallel politicization of those institutions that, as we will see in the single sections dedicated to judiciary, police, administration, takes place at all levels and derives from the perception the winning parties have on the state and the state resources. The state institutions, their financial resources, powers and administration all serve the party and its leading personnel, to be used for partisan or personal needs. The institutions become an instrument of the party, an instrument for partisan goals, and a mean for side-payments to the party members through the recruiting of the staff by partisanship criteria[177]. The politicization of the institutions and the spoiled system are present in all spheres, on local and central level, from the schools to the judiciary and security, representing

[175] See Dimitrova, 2004, pp. 173 – 174.
[176] See Hristova, 2005, p. 114.
[177] See Hristova, 2005, p. 115.

the most often criticized characteristic of Macedonia's fragile democracy[178]. The poverty and high levels of unemployment induce the citizens to trade their political participation and electoral vote in exchange for the solutions of their existential problems and for a job in the state institutions[179].

It is important to underline that while the power-sharing and its central characteristics like strengthening of the political elite, bargaining between the leaders of the participating ethnic groups, the deference to those leaders on the part of each group's ethnic rank-and-file, the bureaucratic appointments are considered by some authors (like Lijphart) as the key towards the inter-ethnic peace, Macedonia is lacking some of the prerequisites that according to the same author are the bases for the power-sharing. Differently from what is recommended, in Macedonia there is an economic disparity between the ethnic groups[180], there is no external threat common to all groups (even though, as we will see, the foreign policy and prospective EU and NATO membership had played a role of unifying the divided elite), there are no overarching loyalties that reduce the exclusiveness of ethnic attachments (see the section on constitution) and, most importantly, there is no prior tradition of compromise[181].

As we will see in the conclusive chapter, the introduction of the power-sharing mechanisms in Macedonia, resulted in the further ethnicization of the politics, increasing, instead of calming, the ethnic identifications and salience of the inter-ethnic conflict. Moreover, it strengthened the political elite whose power is over the limits of the democratic practices, allowing them to successfully avoid any mechanism of the accountability. Far from the "deference to the political elite on the part of each group's ethnic rank-and-file", in Macedonia the social discrimination follows the party lines[182] (rather than, as it could be expected, the ethnic lines) where the strength of the personal ties with the ruling party is a key to success and development, and for many ordinary citizens, the only mean to survive a deep economic crisis.

Seen that the clientelism is a key feature for success, we register a strengthening of the "old", well established parties (with already established relations with the business/lobby

[178] The politicization has been identified as the main problem Macedonia is facing in a series of interviews with Macedonian scholars and representatives.

[179] As Hristova underlined in the e-mail interview, the parties are turned into an employment office.

[180] A very interesting study illustrating the disparities of the economic opportunities between Macedonians and Albanians can be found in the report of the European Stability Initiative for 2002, "Ahmeti's village, the political economy of inter-ethnic relations".

[181] For the list of the characteristics of power sharing and for the factors favoring the power-sharing, see Lijphart, 1990, pp. 497-498, in Snyder, 2000, p. 329.

[182] Hristova, 2005.

groups), followed by the increasing stake in the electoral competition. The rubber-stamp national assembly, the prevailing of the executive, and the bargaining for maintaining the power under any condition (which produces the frequent re-shuffles of government with the relative stability of the main partner) all are consequences of such settlement. In the case of Macedonia, and particularly (but not exclusively) in the case of the ethnic Albanian parties, serious breach of the electoral rules, electoral campaigns sometimes coupled with violence, use of threat (in some cases even threat with violence) for pursuing personal interests, often boycott of the assembly, and, most dangerously, the use of the ethnic rhetorics and nationalism in order to keep support, are no surprise in an environment devastated by the economic crisis and, more importantly, the "unaccountable" political elite.

The influence of the political parties in all spheres of life combined with an electoral system favouring small parties and settling low thresholds for the new entries[183] represents an incentive and opportunity for the fragmentation of the party system we mentioned at the beginning of this section, a process registered not only in the periods prior to the elections, but with equal intensity present in the time between two election rounds[184]. The fragmentation is produced by both the creation of new and, more often, "old" parties splitting when, due to the lack of democratic procedures within the parties, the internal disputes are solved by "exiting". In the periods between two elections this often happens with the parliamentary parties, resulting in the re-coloring of the assembly (when few deputies leave the party to form a new one) and sometimes in the consequential reshuffling of the governments. As Gaber-Damjanosvka and Jovevska stressed, "these regroupings and frequent transfers of MPs from one party to another determine a very different assembly composition at the beginning of its constitution, up until the moment of starting the elections. Shifts of this kind may not be explained as ideological differences within the parties, or by conquering a new ideological area not yet covered in the left/right party scale. Instead, the impression is that personal disagreements between party colleagues are solved in this manner"[185]. The fragmentation without ideological diversification makes it difficult for the small parties to gain significant electoral support (registered by Saveski as an "anomaly"), pushing them to seek electoral coalitions with one of the two larger parties. This finally results in the asset where the elections produce clear majorities in the parliament and "bi-partisan" dynamics in the periods

[183] Saveski, 2005.
[184] See Gaber-Damjanovska and Jovevska, 2006.
[185] See Gaber Damjanovska and Jovevska, 2006.

of stability of the blocks (we mentioned this bi-partisan dynamics when analyzing the powers available to the president), but at the same time represents a source of institutional instability that, according to Mirčev, is a "fundamental, regressive characteristic of Macedonian electoral democracy" (Mirčev, 2005, p. 4).

5.2.3. Developments

In the development of the Macedonian parliament we can notice how, while the main features described above have not changed, its functionality and transparency appear significantly increased over these years. Of particular importance was the adoption of new rules of procedure that entered in force with the fourth legislature, introducing a series of sanctions and rules aiming to discipline the deputies and to increase their participation to the assembly sessions. Being introduced as a necessity deriving from the Framework Agreement (in order to regulate the matters of use of the Albanian language and Badinter majority), the adoption and changing of the rules of procedure turned into a particularly difficult issue, mainly due to the different interpretations of the Framework agreement offered by the two ethnic groups. The rule of procedure also introduced three new committees: the Committee for the Inter-Community Relations, the Committee for the Fight against Corruption and the Committee for the EU Integrations, and provided for the inclusion and regulation of the double majority principle established by the Ohrid Framework Agreement.

The fourth legislature saw not only the entering in force of the new rules of procedure, but was also marked by positive developments concerning the transparency and legislature cooperation with the civil society. In collaboration with the association named MOST, a series of programs aiming to strengthen the parliament and ensure its cooperation with the civil sector were initiated and put in place (collaboration is still taking place). Among the most important initiatives in this cooperation are the opening of the office for the contact between the NGO and assembly in 2004 and the creation of the judicial resource center in 2004, which made more than 1000 legislative acts and official documents available online. Programs for organizing the meeting between deputies and citizens were organized as well.

Recently, the process of changing the rules of procedure came again onto the agenda, the main goal being the increase of the assembly's efficiency and the settling of the blockage of the assembly created due to the negative political climate. The crucial issues in adopting the new rules of procedure concerned: the use of Albanian language by the chairs of committees (still not regulated), the definition of the issues to be adopted by the double majority (here

again the conflict is between the minority and majority, as each side is pushing for its own interpretation of the Framework agreement), and the shortening of the time for discussion (an issue that would increase the government's possibility to "defend" the agenda and would strengthen the government, strongly criticized by the opposition). The proposal was also advanced by the VMRO during their government with DPA in 2006-2007, according to which the number of the seats in parliament shall be increased in order to grant the mandates to the less represented national minorities (Serbs, Turks, Romas, etc.)[186]. The logic behind such proposal of the ruling majority consisted in the effort to neutralize the blocking impact that the combination of the Badinter rules and the characteristics of the Albanian party sub-system created. By introducing the seats for the members of the minorities, the number of the necessary Albanian votes for the Badinter majority would decrease to nine, giving the veto power to the Albanian minority, but not to a particular Albanian political party. The decision was obviously strongly criticized by DUI, who is currently enjoying the veto power in Macedonian assembly, and who succeeded in obstructing the introduction of such practice.

The new rules of procedure were adopted in July 2008, prior to the voting of the new government, in a seating of the assembly where no representatives of the opposition were present. The new rules of procedure further strengthened the possibility for the government to control the legislative process, as the time for discussion of the deputies is further limited, while the deputies are supposed to apply for discussion 24 hours before the session begins. The procedure of the appointment of the government is shortened to one day, while the discussion over the budget can not last more than 3 days. The control of the parties over the deputies appears slightly decreased, as the rules prescribed that the assembly can decide to use the secret ballot on any issue (unlike previously, when the secret vote could be required only for appointment procedures). If implemented, this provision might undermine the parties' control over the deputies. The issue of the use of Albanian language was not regulated, and the support of DUI was achieved only due to the promises that the Law on the Languages would be adopted (it was, indeed, adopted few days later).

[186] On the status of the minority deputies as a part of the current Macedonian dilemmas see Gaber and Jovevska, 2008.

5.2.4. The International Actors and Macedonian Form of Government

As we saw, there were no significant changes in the functioning of Macedonian assembly, except the change of the rules of procedure in 2002 and 2008 and the implementation of the programs initiated in collaboration with the NGO named MOST.

The developments in this field were not subject to conditionality until the last EU accession partnership where, due to the blockage in the assembly's work, the required reforms were obstructed. While in the previous reports the Macedonian assembly, except for the political disputes among parties and criticisms to the electoral procedures, was given a generally positive assessment, in the 2007 report we find criticisms against the institution, concerning the failure to clarify the use of the Albanian language by the chair committees, the and in the following 2007 accession partnership we find the requirement to "enhance the capacity of parliament, notably by increasing its resources."

However, the international actors exercised a significant *indirect* impact on some negative developments in Macedonian assembly. As we already saw, the prevailing of the ethnic cleavage in shaping the party system and the further ethnicization of politics brought to the structural inefficiency where the decision making becomes a privilege of the narrow elite circles engaged in the back-hall bargaining over the division of the state resources. According to some authors, the Ohrid Framework agreement and the insistence on compliance with OFA partially contributed (but surely not created, seen that since its independence the Macedonian elite had such elitist, untransparent approach to the policy making) to the further ethnic institutionalization and strengthened the tendency to "ethnicize", while its accommodation reinforced the already existent political practice of deal-making away from the public scrutiny[187]. The ethnically based institutions, where the "power sharing" between the ethnic groups and decentralization are envisaged as a basis for facing the inter-ethnic tensions, creates the possibility and incentivize a further ethnicization of the issues as, instead of over-passing the ethnic distinctions, they become built in the political system[188]. Moreover, even though the official requirements were not made, the EU significantly pressed for the ethnically based key in the government formation: already in 2006, the EU was suggesting to VMRO to include in its government DUI, as an electoral winner from the Albanian block, promoting a

[187] Dimitrova, 2004, Vankovska, 2002. On the ethnic institutionalization, see Bieber, 2002, 2003. On this, for example, Vankovska would claim that the ethnicization of the problems is a mean used by the politicians when their constituencies bring their accountability into question. See Vankovska, 2004. On Macedonian constitutional design and built-in power-sharing mechanisms, see Maleska, Hristova and Ananiev, 2007.

[188] For a criticism of Linz's argument over the possibility to use power-sharing, federalization and creation of multiple identities as a mean of fighting back the nationalism, see Goio, 2008.

solution similar to the ones typical for the non-territorial ethnic federalism[189]. What was not done in 2006 came in 2008, when DUI made a strong campaign requiring "respect for the Albanian vote". This brought to a coalition that even though can not be labeled "non-ideological", seen the low level of the ideological distance between Macedonian political parties, was however judged as "impossible" seen the high level of animosities and a long history of conflict between the two parties. Finally, the necessity to bring the domestic legislation in line with the international standards, the pressure to introduce the reforms within the pre-established time frame and the harmonization of the domestic legislation with the acquis all further contributed to decrease the role of the assembly in the legislative process (interview with Klekovski, August 2008).

On the other hand, the international actor also contributed to some positive developments we registered, mainly through the socialization channels. The parliament was exposed to a series of potential situations for socialization in the western norm and value, increasing the learning possibilities and fostering the introduction of the best practice. As an indirect influence of international actors we can include the very actions of the association MOST, because even though a domestic NGO, MOST is almost completely financed by external donors, mainly NDI, USAID, Canadian government, even if some of its activities (in the field of electoral monitoring) are sponsored by OSCE and government of the EU members states.

Secondly, the NDI was also directly involved in the process of socialization of Macedonian assembly by supporting the assembly with a manual for the deputies and by organizing courses for deputies on the assembly duties for each new legislature.

The Macedonian assembly's delegations took part to a number of international forums, the most important among which are: The Council of Europe's assembly, the OSCE assembly, Interparliamentary union, CEI, NATO's assembly, Francophony, European Parliament, Western European Union. It also has well developed bilateral cooperation with the assemblies of different countries. Linked to this, we shall underline the activities of the Venice Commission, whose experts were engaged in the process of assessing many of the adopted laws, the very assembly's rule of procedures included.

[189] See Gaber-Damjanovska and Jovevska, 2006.

5.3. A Comparative Assessment

In the previous paragraphs we described the forms of government and party systems of the two studied countries and described the mechanisms that hampered democracy in their cases. In both Serbia and Macedonia, the politicization, corruption and dislocation of the decision-making from the state institutions to the undemocratic leadership of political parties took place. In Serbia's case, the entire constitutional design of the balance between the executive and legislative is modified by the establishment, institutionalization and legitimization of the political party's control over the mandate. Combined with the unsatisfactory solutions in the Law on the Conflict of Interest and the lack of its implementation, such practice further strengthened the narrow political leadership of the ruling parties. The lack of other mechanisms of horizontal accountability (lack of an independent judiciary for example, and the lack of politically independent institutions and state bodies), the lack of democratic practices within parties and the polarized pluralism system, combined with the external influence on the distribution of power limiting the electoral accountability, all contributed to what Pešić labeled "state capture" and "feudalization of the government".

The state capture is a characteristic underlined by many authors as the key feature of Macedonia as well (see Hislope 2002, Labovik 2005, Hristova 2005). However, the mechanisms of state capture in Macedonia differ from the ones we found in Serbia, the key problem in the Macedonian case being the ethnicization of politics bringing to a very difficult reach of national consensus between the majority and the Albanian ethnic minority. The Macedonian constitutional design, especially after the 2001 ethnic violence, included some of those mechanisms that were aiming to ensure peace and stability through the principles of power-sharing. As we will see in this work, the entire EU activity in Macedonia was concentrated on supporting the Ohrid Framework Agreement. Unfortunately, such mechanisms made the ethnic division a profitable electoral strategy to follow, bringing the fragile consensus, on which the Macedonian democracy resides, under continuous pressures. In this light, the "May agreement", the continuous proposals to re-examine the electoral system, as well as the recent debates over the introduction of some kind of collegial presidency based upon the ethnic key, all makes it difficult to find a basis for Macedonian peace and stability over the "consensus" mechanism described by Hislope. The decision-making process is therefore a victim of the "vital ethnic interests" covering the narrow

personal interest of the ruling elite. The final outcome is similar to what we had in Serbia, with the rule of law being replaced by the rule of deal.

Being the inner politics a delicate issue to deal with, the matters concerning the constitutional design were not subject to the explicit EU conditionality, even though in Serbia's case the imperative mandate was strongly criticized by both the EU and the CoE experts. The EU democracy promotion strategies in this field mainly concentrated in promoting the transparency, efficiency and offering financial support through the socialization channels. The low conflictuality of these issues favoured the rule adoption, transparency and the institutional capacity of the institutions in both countries scoring positive developments.

Table 1: "Form of government and IA's activities in Serbia and Macedonia"

	Serbia		Macedonia	
	Form of government, party system, government formation.	Transparency, efficiency, capacity of the government and assembly.	Form of government, party system, government formation.	Transparency, efficiency, capacity of the government and assembly.
IA promoted the norms:	No (it rather promoted the actors).	Yes.	Yes (power sharing).	Yes.
IA's interest:	Security.	Democratization.	Security.	Democratization.
Channel of influence:	Influence on domestic distribution of power.	Socialization, assistance.	Conditionality.	Socialization, assistance.
Rule promoted by the IA adopted:	-	Yes.	Yes.	Yes.
The main shortcomings/problems in the field:	Polarized pluralism, peripheral turnover, lack of inter-institutional accountability, Imperative mandate.	-	Power-sharing mechanisms that institutionalize the ethnicity and incentive the further ethnic division.	-
Assessment of IA's impact:	Negative (strengthening the impact of the polarized pluralism due to choice of the strategy).	Positive.	Negative (further ethnicization due to the IA's content).	Positive.

In the introduction, we mentioned that the literature on Europeanization advanced a thesis according to which the process of the European integration, due to the necessity to

harmonize the domestic legislation with the EU normative framework, brings to the establishment of "speed track" procedures, this way producing a strengthening effect on the executive. In the two countries under exam, seen the already prevailing role of the executive, such impact, even if present, only served as an excuse for the already established practice of marginalization of the parliament.

Finally, in Serbia's case, we underlined the negative impact the use of the "influence on the domestic distribution of power" strategy exercised on further hampering of the electoral accountability and on modeling the short-term preferences of the central actors. In the conclusion of this work we will underline how the prevailing of the security concerns over the democracy promotion tactics induced the EU to accept Serbian fake compliance. Similarly, in Macedonia, the unofficial EU insistence on accepting the ethnic key in the government formation further strengthened the already existing trend of the institutionalization of the ethnicity.

APPENDIX

Table 1: "EU priorities concerning the Serbian parliament".

Report 2002:	Constitutional reform. The efficiency of the parliamentary structures should be improved. Parliamentary procedures should be made more efficient. The reform of electoral laws in line with CoE and OSCE standards (which include, among other, the recommendation to cancel the articles ensuring party control over the mandates).
Report 2003:	Revision of the constitution in line with the constitutional charter. Improved functioning of democratic institutions. More efficient parliamentary procedures and functioning. Improvement in administrative capacity at all levels of government. The reform of the electoral laws in line with CoE and OSCE standards (which include, among other, the recommendation to cancel the articles ensuring party control over the mandates.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia, author's elaboration.

Table 2: "EU priorities concerning the Macedonian parliament".

2007 EU partnership with Macedonia	Enhance the capacity of parliament, notably by increasing its resources.
2008 EU partnership with Macedonia	Enhance the capacity of Parliament, notably by increasing its resources.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia, author's elaboration.

Table 3: "Serbian and Macedonian form of government" (based on relevant legislation, author's elaboration).

		Serbia	Macedonia
Assembly	Number of chambers:	1	1
	Number of deputies:	250	120-140
	Permanent Committees:	Yes.	Yes.
	Duration of mandate:	4 years.	4 years.
	Veto power to the ethnic minorities (qualified majority on the ethnic grounds):	No.	Yes.
	Veto power to the political minority (qualified majority):	Yes (absolute majority, 2/3 majority for constitution).	Yes: 2/3 majority.
	Can be dismissed by:	President + Prime Minister.	Assembly.
	Power to dismiss the president:	Limited (veto to the CC).	Limited (veto to the CC).
	Power to appoint the government:	Yes.	Yes.
	Vote of (mis)confidence:	Yes.	Yes.
	Power to question the government and its members:	Present.	Present.
	Interpellation:	Present.	Present.
	Obligation of government to submit regular reports to assembly:	Present.	Present.
	The mandate belongs to the:	Party.	Deputy.
President	Election:	Directly elected.	Directly elected.
	Mandate (duration and limitations):	5 years max 2 mandates.	5 years max 2 mandates.
	Power to legislative initiative:	Absent.	Absent.
	Power to convoke the session of assembly:	Absent.	Absent.
	Power to influence the parliamentary agenda:	Absent.	Absent.
	Power to veto the bill:	Limited (simple majority over votes the veto).	Limited (simple majority over votes the veto).
	State of emergency:	Present (1991). Limited by the veto of PM and President of assembly (2006).	Present.
	Powers during the state of war/state of emergency:	Rule by decrees (1991). Rule by decrees together with PM and President of the assembly (2006).	Power to dismiss and appoint the government. Government has the powers to rule by decrees during the state of war/emergency.
	Special powers in the field of the foreign policy:	Limited (appoints the diplomats together with PM).	Present (appoints the diplomats).
	Power in budget design:	Absent.	Absent.
	Power to dismiss the assembly:	Limited (PM veto).	Absent.

	Power to appoint the candidate for PM:	Present (limited by the necessity to consult the parliamentary majority).	Present (limited by the necessity to consult the parliamentary majority).
	Power to dismiss the government:	Absent.	Absent.
	Powers in the security sector:	Position of the Commander in Chief.	Position of the Commander in Chief.
Government	Type of government (majority large, minimal, minority government):	Large majority 2001-2002. Minimal majority 2002-2003. Minority government 2004-2007. Minority government 2008 -.	Large majority (inclusion of the Albanian ethnic minority).
	Type of government (according to the composition):	Multi-party (coalitional) government.	Coalitional (intra-ethnic coalition) government.
	Government duration (in months, change of the prime minister is calculated as the change of government):	30.3 (since 2000).	30.4 (since 2000).
	Government duration (change of the coalitional partners as the change of government):	18 (since 2000).	

Table 4: "The form of government development in Serbia, external factors" (author's elaboration).

	Issues concerning the transparency, efficiency, institutional capacity	Issues concerning the balance of power, political system, imperative mandate
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	-	-
Was the issue part of the EU ***key*** short-term priorities?	No.	No.
Was the issue part of the EU a short-term priority or among the priorities needing attention in the SAA reports?	Yes.	-
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.	No.
Amount of the EU financial support to the reform in general:	10 millions (training for administration and MPs on the EU integration, Parliament functioning and acquis).	-
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	-	-
Reform perceived by the IA as:	institutional capacity building.	internal affair (except for the imperative mandate, recently strongly criticized).
The main concern guiding IA's intervention in the field:	Democratization.	democratization
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	-	-
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.
Were the recommendations made by the IA accepted?	Mainly.	No.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	-	-
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	-	-

Table 5: "The form of government development in Serbia, domestic factors"(author's elaboration).

	Issues concerning the transparency, efficiency, institutional capacity	Issues concerning the balance of power, political system, imperative mandate
Domestic input for the change:	present (need to foster the efficiency).	-
Domestic actors pushing for the reform:	civil society, government for the efficiency.	Weak - civil society.
Level of conflictuality of the issue:	Low.	High.
Type of the conflict and main line of the conflict:	-	Rulers vs. Ruled.
Did the issue concern the deep divisions in society?	No.	No.
Type of the issue (salience - positional):	Salience.	-
The main beneficiaries of the status quo:	-	Political parties, ruling elite.
The main beneficiaries of the change:	-	Citizens.
Is the existing status quo strongly delegitimized by all relevant actors?	-	-
Two or more alternative solutions present?	-	-
Political fluidity/stability (in terms of the perspective of power of the central actors)	-	-

Table 6: "The form of government development in Serbia, outcomes" (author's elaboration).

	Issues concerning the transparency, efficiency, institutional capacity	Issues concerning the balance of power, political system, imperative mandate
The procedure of law drafting:	-	Away from the public.
The main deficiency in the adopted legislation:	-	Imperative mandate, state capture, strengthening of the party control over the assembly, hampered parliamentarianism.
The main beneficiaries of such deficiencies:	-	Political parties, ruling elite.
The status (2008):	-	Hampered parliamentarianism, state capture.
The EU comment in the 2008 report:		Strong critics of the imperative mandate and party control over the deputies.

Table 7: "The form of government development in Macedonia, external factors"(author's elaboration).

	Issues concerning the transparency, efficiency, institutional capacity	Issues concerning the balance of power, political system, imperative mandate
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	Issues concerning the transparency, administrative capacity, efficiency and similar	The issues concerning the decision-making process, the state capture, the balance of power between institutions
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	No	No
Was the issue part of the EU ***key*** short-term priorities?	Yes	-
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	No	No
Was CARDS financial support to the process conditioned by the adoption of the laws?	Yes	No
Amount of the EU financial support to the reform in general:	no	No
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:		-
Reform perceived by the IA as:	-	-
The main concern guiding IA's intervention in the field:	part of the institution building process	an internal matter, too delicate to tackle
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	democratization	security, diplomacy, strategy
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	-	yes
Were the recommendations made by the IA accepted?	Yes	yes
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	Mainly	no
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	-	-

Table 8: "The form of government development in Macedonia, domestic factors" (author's elaboration).

	Issues concerning the transparency, efficiency, institutional capacity	Issues concerning the balance of power, political system, imperative mandate
Domestic input for the change:	Framework Agreement (requiring the redefinition of the parliament's rule of procedure).	No substantial change.
Domestic actors pushing for the reform:	Weak - civil society.	-
Level of conflictuality of the issue:	Low.	
Type of the conflict and main line of the conflict:	-	Rulers vs. ruled.
Did the issue concern the deep divisions in society?	No.	-
Type of the issue (salience - positional):	-	-
The main beneficiaries of the status quo:	-	Political parties, ruling elite.
The main beneficiaries of the change:	-	Citizens.
Is the existing status quo strongly delegitimized by all relevant actors?	-	-
Two or more alternative solutions present?	-	-
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.	Fluid.

Table 9: "The form of government development in Macedonia, outcomes" (author's elaboration).

	Issues concerning the transparency, efficiency, institutional capacity	Issues concerning the balance of power, political system, imperative mandate
The procedure of law drafting:	-	-
The main deficiency in the adopted legislation:		The state capture, ethnicization of the politics, institutionalization of the ethnicity, corruption.
The main beneficiaries of such deficiencies:		Ruling elite, political parties.
The status (2008):	-	-
The EU comment in the 2008 report:	-	-

6. THE DECENTRALIZATION

"For the ordinary man is passive. Within a narrow circle (home life, and perhaps the trade unions or local politics) he feels himself master of his fate, but against major events he is as helpless as against the elements"
George Orwell, 1940.

A Serbian sociologist and politician, Svetozar Marković, underlined that "important interests of the state overlap with the interests of the people and municipalities, so that the whole country should be organized as the union of the free municipalities" (from Matić, 2006, p. 397) already at the end of the XVIII century. The procedural conception of the representative democracy does not prescribe any particular territorial design as a necessary condition for democracy.[190] Yet, if we take into consideration other dimensions of the quality of democracy, like responsiveness (representing the outcome) or freedom and equality (the content of democracy), we can easily conclude that the decentralization is a mechanism that contributes to increase the quality of democracy. In the representative democracies, the smaller the political unit, the bigger the influence of the single citizens on the election of the representatives and the closer the decision-making institutions to the citizens. In the small units the voice of the citizen is more easily heard, his preferences are more easily expressed, the participation is both easier and more attractive. Other things being equal, we can argue that in the smaller political units both the responsiveness and the accountability of the ruling elite increase thanks to the increase of the single citizen's power[191]. The bigger democratic capacity of the smaller political units represents one of the core liberal arguments in

[190] The discussion about the risks and benefits of centralization and decentralization was and still is rather vivid, and maybe the best approach is Sartori's, according to whom the best solution is the one that best fits in practice, so we can argue that a particular territorial organization in the specific country can not and should not be analyzed outside its context, each country having its own best solutions. This means that rather than concentrating on a particular pattern of territorial organization as the best for democracies, we should assess the functioning of the institutions in practice, understanding how the government is organized in a specific country and comparing the outcomes of such solutions, not the solutions themselves. See Komšić, 2007.

[191] Heywood thus brings the following four arguments for decentralization: 1) participation to political life; 2) opening of the institutions, increase of the democratic responsiveness and more direct contact with people; 3) legitimacy of government; 4) freedom, division of power and creation of a net of checks and balances. (Heywood, 2004: 304-307, cited in Komšić, 2007, p. 219).

underlining the benefits of the decentralization and the principle of subsidiarity for the development of democracy. The local government was identified as the "cradle of democracy" (Chandler and Clark, 1995, p. 767), while the socialization and educational function were attributed to the local level politics, where the local democratic institutions are conceived as the place where the citizens are educated in democracy and the democratic participation. It is no surprise then that the international organizations engaged in the democracy promotion all included the recommendations concerning the development of the local self-government.

The territorial organization and the distribution of power between the center and periphery were a core of interest for many analyses. The conflict between the center and periphery represents one of the four political cleavages identified by Rokkan and is seen as crucial for the explanation of the state and nation-building process, as well as for explaining the dissolution of the states (see Bunce, 1999, 2006). It is then surprise that the decentralization of the central power, the high levels of autonomy and the strengthening of the units of the local self-government were advised as instruments for settling the intra-group (and in particular intra-ethnic) conflict in those contexts where the demographic distribution offers the possibility for territorial solutions based on power-sharing[192].

The heterogeneous societies, the nationalism developed due to the overlapping between the democratization and the nation-state building process and the presence of territorially concentrated ethnic minorities requiring the territorial re-organization brought to the situation where in both Macedonia and Serbia the territorial organization of the country and the distribution of power between the center and periphery is a crucial dimension of the political conflict. In line with Linz and Stepan, it is possible to argue that being the territorial organization in the two countries linked with at least two of the obstacles to the democracy consolidation identified by the authors, understanding the decentralization process is crucial for explaining the level of democracy established in the two countries. As we will see, the national particularities that induced to the search for territorial solutions to the inter-ethnic conflict brought to the situation where the international and domestic experts' recommendations in the field were often neglected or modeled by the intra-party and intra-ethnic conflict. The different results we register in Serbia and Macedonia[193] can be explained

[192] See Malevska, Hristova and Ananiev, 2007. The decentralization and federalization as one of the characteristics of the consociational model of democracy, advised for the socially heterogeneous societies by Lijphart (1984).

[193] In this dimension as well Macedonia scores positively in terms of compliance with the international standards.

mainly by the capacity of the militant Albanian minority in interpreting the decentralization as one of the key issues of Macedonian peace and stability. Consequentially, the prevailing opinion that decentralization is the key to Macedonian peace will bring to a very strong pressure and credible, decisive actions from the international community.

6.1. Serbia: Centralizing Effects of Decentralizing Measures

6.1.1. Earlier Periods and Some Sporadic Changes

The decentralized government and the autonomous, developed local self-government units were part of the old Serbian tradition. Their origins go back to the periods of the ottoman rule when the units of local self-government represented a kind of "compensation" for the lost statehood and, at the same time, were a basis from which the rebellions against the Turks were conducted. After the liberation and creation of the national state, the nation-building politics and the authoritarian tendencies of the Serbian leadership resulted in the centralization of the country and gradual dismantling of the previously existing system of local self-government. Near the end of the XIX century the national elite, inspired by the experiences of the French revolution, successfully pushed the ideas of decentralization forward. Put into practice, these ideas resulted in the decentralization of power and the strengthening of smaller units of territorial organization in the constitution of 1888. The system of government prescribed by this document also included the democratic principle of the election of the local legislative and executive organs. In the period between the 1888 constitution and World War II, the distribution of power between the center and the periphery continuously oscillated between the tradition of the democratic local self-management and the centralistic tendencies of the more or less strong authoritarian national leaders[194].

The communist regime, after a short period of centralization and establishment of the power during the 40s-50s, also opted for decentralized forms of government, gradually increasing the autonomies of the different units of territorial organization. The process of decentralization undertaken by Tito had particular consequences on the territorial organization of Serbia. With the formation of the Communist Republic of Yugoslavia, the borders of Serbia were redesigned, forming the Montenegro, Macedonia and Bosnia off those parts that

[194] See Matić, 2006, also Šević, 2005.

in the kingdom of the Serbs, Croats and Slovenes were considered Serbian territory[195]. Further on, on the territory of Serbia two autonomous provinces were established, decentralizing the northern region of Vojvodina and the south-western region of Kosovo and Metohija[196].

The autonomy of the two provinces constantly grew, to reach its peak in the 1974 Yugoslavian constitution, that gave the 3rd-level territorial unit the status often enjoyed by those units of highly decentralized federations: only defense and monetary policies were entrusted to the government of the Republic of Serbia. The provinces enjoyed the de facto decision-making power, had a "provincial government" and not only "the executive council", had their "constitution" and not "statute", had the control over the police and secret agencies, independent pension and health and other social funds[197].

The Serbian 1990 constitution significantly narrowed the autonomy of the provinces. The status of province was *granted* to these territories due to their special national, historical and cultural characteristics, establishing the province as a political/ethnic rather than administrative unit[198]. Their already narrow competencies were further limited during the '90s through the lack of implementation of constitutional liberties. As in many areas of policy, the 1990 constitution left the distribution of competencies between different levels of government ambiguous. This allowed for the already centralistic constitution to be interpreted in an even more "centralistic" manner, a step justified by the necessity to fight back against the secessionist aspiration of minorities. The ongoing conflict in Kosovo served as an excuse to suppress Vojvodina as well, where any request for larger autonomy was considered a sign of separatism.

After the change of regime, the Vojvodina Hungarian minority, as well as Serbs aspiring to greater independence, increased the pressures for the re-establishment of the 1974 autonomy. The Law on the Autonomous Provinces was adopted in 2002 on the proposal of the Vojvodina province's assembly and it is still in force. As the improvement of the "constitutional and legislative provisions concerning decentralization and the organization of local authorities and the autonomous regions[199]" was included among the conditions Serbia should fulfill in order

[195] Both Montenegro and Bosnia and Herzegovina existed as territorial units until 1918, when the assemblies in the two countries voted their adhesion to Serbia. Macedonia did not exist as an independent territorial unit except for the ten-day long Kruševo Republic in August 1903, and it was associated to Serbia after the Balkan wars.

[196] See Simić, 2003.

[197] See Simić, 2003.

[198] We shall underline that a similar conception of the province was a basis on which the Vojvodina and Kosovo and Metohija have been designed as the autonomous provinces in the constitution of FRY in 1946.

[199] See CoE opinion No 239.

to ensure the FR Yugoslavia (Serbia and Montenegro)'s membership in CoE, the adoption of the Omnibus Law was also one of the "steps that surely brought Yugoslavia nearer to its membership to the CoE"[200].

The Omnibus Law on the Autonomous Provinces was supposed to be just the first in a series of steps in a process that would bring Vojvodina to the levels of autonomy enjoyed in 1974. Even if the law itself was limited in its goal and considered insufficient by the regional elite, its adoption in the Serbian national assembly was accompanied by a long debate and it was voted with very narrow majority, obtained thanks to the personal commitment of the Prime Minister Đinđić (119 votes for, sufficient due to the fact that 14 deputies did not take part to the assembly). The support in the assembly was ensured thanks to the increased bargaining power of 19 Hungarian deputies who successfully threatened the government, exchanging their support to the ruling coalition for the adoption of the Omnibus Law[201].

A similar pattern of decentralization/centralization cycles can be registered at the level of cities and municipalities. The 1990 constitution envisaged the municipalities as levels of local government, granting them the regulative power in what was known as the "communal services" and (ambiguously unspecified) competencies in fields such as health, education, local media. During the Nineties the competencies and autonomy of the local governments were continuously undermined[202], their already narrow autonomies being further reduced after the local elections in 1996. The victory of the democratic opposition in many municipalities and biggest cities turned the units of local self-government into strategic points for opposing the regime, so that, in response, the center strengthened the control and took those few powers previously enjoyed by the local elite away.

While the constitutional definition of the municipalities' competencies only slightly changed after the regime change, the interpretation of these competencies and autonomies was significantly broadened with the 2002 Law on Local Government, adopted due to internal (the local governments) as well as external (especially CoE) pressure. The necessity to urgently face the difficulties met in the functioning of the municipalities, some being even close to bankruptcy, the promises for the decentralization that were the core of the democratic

[200] See http://www.b92.net/info/vesti/index.php?yyyy=2002&mm=01&dd=28&nav_id=55888.

[201] Savez Vojvođanskih mađara, skupštinska informacija, 09. 01. 2002, http://www. vmsz. org. yu/sh/skupstinskeinfo/cikk. php?id=5, izjava Veselinova za javnost, 14. 01. 2002: Vlada neće pasti ako se ne izglasa omnibus. http://www. mediaclub. cg. yu/dnevnevijesti/arhiva/2002/januar/22srb1. htm, http://www. koalicijavojvodina. org. yu/arhiva/press/press_jan02. htm.

[202] According to some authors, the territorial centralization that took place in the '90s was based on Milošević's need to exercise full control over all aspects of life, including, also, the control of the corruption channels established both on the level of the central as well as the local government. See Vuković, 2002.

opposition electoral campaign during all the '90s and in 2000, and the strong domestic delegitimization of the existing status quo represented the inner inputs for the change. The inclusion of the decentralization among the conditions for the CoE membership was an external factor that contributed to the rule adoption[203].

The most visible improvements were registered in the field of the fiscal autonomy. During the '90s, in line with the centralization undertaken by Milošević, the local governments were made financially dependent on the revenues from the central budget, while their economic status was further undermined after 1996, when the right of municipalities to own property was abolished and property was seized by the central government. With the change of regime at the end of the 2000, the financial situation of the local governments improved. The municipalities' share in tax revenues gradually increased in 2001, 2002, 2004 resulting in the increase of the budget, while in 2006 the Law on the Financing of the Local Self-government and the constitution gave local governments the power to determine the rates of the property tax and to collect it, the power to raise direct revenues and to manage the public assets. The right to own property, after strong international pressures, was finally re-established with the 2007 Law on the Local Self-government. Nevertheless, these positive legislative developments in the field of the fiscal decentralization still did not bring to a significant change, as the implementation is slow and difficult. The power given to the municipalities to collect taxes, due to the obstructions from the central government and administration, was delayed for more than three years. The side legislation necessary for the property to be given back to the municipalities is still not in place. In the meantime, the municipalities are faced with serious financial problems: while the republican bodies are not interested in collecting taxes on behalf of the municipalities, the lacks of the property rights hamper the development as the municipalities can not rise the favorable grants made available by the EBRD[204].

Given the level of centralization introduced by Milošević during the '90s, it should be no surprise that the relation of accountability between the center and the periphery is biased in favour of the central government. The control exercised by the center was finally limited and regulated in 2002 by the Law on the Local Government which increased the financial independence, but the 2005 Law on Government re-established the control of the center by giving the government the power to annul the local acts in case of suspect unconstitutionality.

[203] For the comments on the draft-law, see Simić, 2001. For the presentation of the draft-law with the explanation of the principles guiding the adopted solutions, see Protić, 2001.
[204] From the interview with the member of the Conference of the Cities and Municipalities, 21-07-08.

The central government was also given the power to dismiss the municipal assembly in case it failed to call for a session in more than three months, or it failed to adopt the budget, and this provision, combined with the effects of the institutional design of the local governments, became a source of political games between the ministry of local self-government, mayors and local assemblies.

6.1.2. The Constitutional Reform Without the Change

The Omnibus Law on the Autonomous Provinces, the Law on the Local Self-government and the other legislation introduced in the period 2000-2006 represented the ad-hoc answers to the urgent problem of the territorial re-organization. Both the domestic and the international actors believed that the questions of the local autonomies shall be solved through the constitutional reform, this way justifying the maintenance of the status quo and the introduction of sporadic changes. The unsolved problem of the Kosovo status, Vojvodina's requests for autonomy and belief that decentralization is a step towards secession[205], combined with the struggle for power between the local and central elite, contributed for the territorial organization to become one of the most salient and polarized conflicts in Serbian political life. The question of the territorial organization blocked the constitutional reform in Serbia, delaying the process until a series of circumstances resulted in the decision to adopt the constitution, which leaves the questions linked to the decentralization unsolved (see the section on the constitutional reform).

The failure of the new "fathers of the Serbian nation" to settle the disputes on local autonomy is particularly visible in those parts of the constitution that concern the autonomous provinces. As stated by the Venice Commission, "this part of the Constitution seems not very coherent. On the one hand, there are generous provisions of principle, including the right to provincial autonomy and local self-government and on substantial autonomy of Autonomous Provinces, while on the other, these principles are not adequately guaranteed" (Venice Commission opinion on the Constitution of Serbia, 2007).

As far as the division of competencies between the State, the autonomous provinces and the units of local self-government is concerned, the constitution adopted in 2006 also stayed ambiguous as the large autonomy expressed in principles is not filled with any substance.[206] The ambiguously formulated principle of subsidiarity in the Article 177 is combined with a list

[205] The dissolution of Yugoslavia is the example with which the advocates of centralization are arguing.
[206] See the opinion of the Venice commission on the constitution of Serbia.

of competencies of the autonomous province in the Article 183, some of which are also listed among the central government's competencies. The goal of the provincial autonomy is neither precisely defined nor given adequate constitutional guarantees, leaving a matter to be settled through legal acts of lower rank[207]. The strong pressures coming from Vojvodina, together with the centralist tendencies of the center combined with a high level of conflict about the decentralization, makes such non-solution very destabilizing as every new ruling majority can decide to change the status of the provinces.

As a positive change, the 2006 document introduced (even though with weak guarantees) the principle of the fiscal autonomy, gave the province the right to use symbols, abolished the republic's veto power and completely left the design of the AP's system of governance and electoral system to the competencies of the AP.

One of the most important changes introduced by the new constitution concerns the very *meaning* of the concept of autonomous province. The 1990 constitution conceived the status of the AP as a particular status to be *granted* to Vojvodina and Kosovo and Metohija "in accordance with the special national, historical, cultural and other characteristics of these territories". No mechanism for setting up new autonomous provinces was envisaged. The category of the AP was conceived not as a mean for better management and governance, neither as an administration unit, but as an "ethnical" and "political" unit. In this light, the 2006 document opens the possibility for another interpretation of the term. The constitution defines the AP as a unit of territorial organization together with the municipalities. The citizens are given *the right* to provincial autonomy and self-government, the right that limits the state power and that can be subject *only* to the supervision of constitutionality and legality (more about supervision of AP and municipalities in the next paragraph). It states that Serbia has two APs (Vojvodina and Kosovo), and envisages the procedure for the creation of new autonomous provinces as well as for the abolishment of the existing ones. The interpretation of the concept of the autonomous province thus changed from the status *granted* by the state to two particular regions due to their "historical and cultural" particularities, to the *right* of citizens to provincial autonomy. However, this shift in the understanding of the concept, even though embedded in the constitution, was not enough to allow the necessary regionalization in Serbia. The failure of the decision makers to allow the regionalization of Serbia, or at least to allow the creation of the APs on the territory of central Serbia, is one of the most serious problems underlined by the representatives of the local self-government. The status of the

[207] On the autonomy of Vojvodina in the new Serbian constitution, see Komšić, 2007.

Autonomous Province, even though, as we saw, unsatisfactory for Vojvodina which aspired to the 1974 independence, would allow the regions of central Serbia access to the necessary resources for the regional development. The bigger discretion in the decision making, the bigger portion of the budget, and the bigger share in the revenues from the privatization[208] enjoyed by the APs would allow the municipalities to put in practice the development plans they are allowed to adopt, but that they lack the resources to implement. "Even though constitutionally granted, the right to provincial autonomy can not be exercised seen the still present nationalistic rhetorics (mainly due to the experience with Kosovo). Any effort to exercise this right and create the provinces in Central Serbia is politically impossible and would be prevented from the centre by further using the nationalistic rhetorics"[209].

The general ambiguity of the constitution in regulating the territorial organization also influenced the articles concerning the units of local self-government. Similarly to what it was like with the APs, here again the large autonomy guaranteed in principle is left unprotected or even undermined by less decentralizing solutions. The relations between the centre and periphery remained ambiguous, combining the principle of the right to local self-government with the mechanisms of the central control. The municipal assembly is conceived as the maximum expression of the constitutionally granted right to local self-government, a provision that will be later used to justify the abolishment of the directly elected mayor (see further). At the same time, the democratically elected municipal assembly can be dismissed by the central government under conditions left unspecified in the constitution, and its acts can be put out of force whenever the central government doubts their constitutionality and may remain suspended until the constitutional court decides upon them.

In the matters concerning financial autonomy, the constitution again failed to guarantee the municipalities the right to own property and the right to taxation. The power to raise direct revenues and to manage the public assets represented a novelty introduced by the constitution. Among the new competencies we find the protection and improvement of human and minority rights, the power to establish municipal symbols and to decide on their use, as well as the power to prescribe sanctions related to the violation of municipal regulation. The Constitutional Law prescribed that other issues concerning the territorial organization were to be settled through ordinary legislation, to be adopted before December 2007. The Constitutional Law in particular

[208] The municipalities are given only 5% of the revenues from the privatization, while the AP's share is an additional 50%, which then means that, from the privatization in central Serbia, 95% of the revenues go to the central level, while from the privatization in Vojvodina only 45% are left to Belgrade.

[209] From the interview with Ćirković, August 2008, Niš.

required the adoption of the new Law on the Local Self-government, the new Law on Territorial Organization and the new Law on Local Elections.

The 2006 parliamentary elections, the difficulties in the government formation and the status of Kosovo negotiations marked the period after the adoption of the constitution. In such politically turbulent period, the search for political consensus over one of the most controversial reforms in Serbia was very difficult. After the government formation in May 2007, the procedure of drafting a set of laws concerning the reform of the local self-government started off in the ministry for the local self-government. The interest groups, the Conference of the Cities and Municipalities of Serbia (a body representing the local municipalities) and the international consultants were all included in the drafting process. The law draft was supposed to be sent to the public debate in September 2007 and to be adopted in October the same year. The most severe debate concerned the choice of the electoral system at the local level, as some political parties and the ministry involved in the drafting procedure were requiring the passage to the majoritarian electoral formula, while the others (like G17+) were pushing for the maintenance of the proportional system.

Even though prepared in time, the laws were not adopted as planned, the delay being mainly caused by the conflict over the scheduling of the presidential elections that divided the ruling majority. The legislation on the territorial organization became an instrument of the intra-party bargaining and was subordinated to the short-term strategies and preferences of the political elite. The law proposals were re-written in order to ensure the support of the political stakeholders and the amendments and changes were introduced in the original drafts, making the adopted documents different from the ones submitted to the public discussion.

The package of the laws introduced in 2007 brought some important changes. Complying with the strong international pressures, the legislator finally allowed municipalities the right to own property. The municipalities also gained power in the field of social protection and in the field of media (included the media in the national minorities' language), while the cities were given control over the community police. Criteria for establishing the municipalities and cities based on the population size were prescribed, lowering the central level's influence in granting the municipality or city status to the territorial units.

At the same time, this trend in the increase of the levels of the autonomy was followed by structural changes that annulled the effects of the decentralization process. First of all, the 2007 legislative reform did not bring substantial changes in the central government's

instruments of control on the local government. The power to suspend the acts due to suspect unconstitutionality and the power to dismiss the local assembly were maintained. Further on, the 2007 Law on the Local Self-government introduced radical changes in the institutional design of the local level governance, modifying both the mechanisms of the horizontal accountability on the municipality level and the periphery-centre relationship.

The difficulties, experienced by many municipalities in handling the conflict between the directly elected mayor and a majority which was hostile to him in the municipal assembly, were used to radically change the existing institutional design based on the large executive powers of the directly elected mayor, dual executive and municipal council accountable to the assembly. With the 2007 legislation, the mayor is no longer directly elected, but is appointed by the municipal assembly. He becomes a head of the city council whose members he proposes to the assembly. The whole executive is made accountable to the assembly, while the executive competencies, previously enjoyed by mayors[210] are shifted to the municipality/city councils. The Law on the Local Self-government dismantled the previously established balance of power between the mayors and the assembly. It introduced the clearly parliamentarian type of governance on a local level and strengthened the local assemblies as the institutions that "express the citizens' right to local self-government" (Article 180 of the Constitution of Serbia).

While all municipal executive organs are made responsible to the assembly, the changes in the Law on Local Elections ensured that the deputies in the local assemblies are put under the control of the political parties. Following the Article 102 of the constitution, the Article 47 of the Law on Local Elections allowed the stipulation of the contract regulating the relationship between local deputies and the titular of the electoral list. At the same time the Articles 41, 42, 43 and 48, due to their imprecise formulation, left the assignment of the mandates to be decided by the parties. The Law on the Local Self-government thus shifted all lines of the accountability on the local level to the assembly, while the Law on Local Elections turned this "highest organ" into an instrument in the hands of the political parties. The result is that many zones within the same municipality do not have a representative in the assembly, which then often results in the negligence of the interests of these zones, pushing the power away from the citizens.

[210] In particular: implementation of the acts adopted by the assembly, initiative in proposing the acts to the assembly, responsibility in implementing the competencies that were transferred from central to local level, implementation of the budget, appointment of the heads of department in the local administration.

This way, the central question of the accountability of local institutions becomes on one side the question of the relationship between the coalitional partners in the local government, on the other the subject of the dynamics of the party's inner conflict between the central and local leadership. In the authoritarian environment of Serbian parties[211] this situation is favouring the narrow party leadership in the centre. The domestic annalists feared that the formation of the local governments will become the subject to trade in the government formation process on a national level. The events that marked the election of the mayors after the 2008 local elections, and in particular the events concerning the appointment of the mayor of Belgrade in summer 2008, are clear illustrations of "the centralizing effect of the decentralization reform" undertaken in 2007. The institutional/administrative decentralization of the powers between the different levels of government was combined with the centralization of the inner party- powers and the modification of the institutional design to reduce the impact of the reforms.

6.1.3. The Role of the International Actors

The process of the SAP negotiations and democracy promotion in Serbia's case also included the promotion of the decentralization process and the strengthening of the units of local government. The financial support of the EU and CoE made available to Serbian municipalities played a crucial role in the development of the Serbian municipalities, brought by Milošević's regime in a situation of severe financial austerity (see Table 4 in the appendix).

As far as the conditionality is concerned, the credibility of the EU conditionality in the field was hampered by the EU's approach, according to which the matter was linked to the constitutional reform (see for example the SAA reports). The consequence of such approach was that in the European Partnerships with Serbia we do not find explicit priorities concerning the territorial organization of the country, and instead, the call for the constitutional reform was supposed to cover the territorial organization as well (see Table 3 in the appendix). The legislations adopted during the period 2000-2006, aiming mainly to provide the ad hoc solutions in order to manage the growing internal pressures, were prized by the EU, resulting in rather positive assessments on the developments in the field and increased pressures for the constitutional reform.

[211] For the centralized, personalistic, almost authoritarian practices of the Serbian political parties, see Goati, 2006. The party control from the centre and the weakness of the local branches of the party when facing the central organization have also been registered in the interviews with the representatives of the local party branches undertaken in August 2008 by the author in the city of Niš.

When the long-awaited for constitution was finally adopted, it became clear that the elite was not able to overcome the differences on the issue, which then resulted in unclear articles about the territorial organization. Consequentially, the 2006 Commission report stressed that the goal of the territorial decentralization is one of the parts of the newly adopted constitutions that are subject to serious concern (for the detailed criticism of the provision on the territorial organization see the report of the Venice Commission).

At this point it is important to underline the crucial role the Council of Europe played in the adoption of the 2002 legislations. Including the Law on the Local Self-government as a necessary condition for Yugoslavia (Serbia and Montenegro)'s membership in the Council of Europe brought the issue of the territorial organization onto the agenda. The necessity to bring Serbia's legislation in line with the European Charter on Local-Self Government was also underlined by the government during the exposition in the National Assembly of the law proposal[212]. The positive constellation of the domestic factors ensured the smooth rule adoption and the compliance with the international standards. The technical assistance provided by the CoE experts in drafting the legislation, the resources made available for the Serbian municipalities, the continuous monitoring procedure underlining the necessity for the shortcomings to be removed, together with the insistence that Serbia ratified the Convention on the Units of the Local Self-government, represented a crucial external support for pushing forward the decentralization process.

6.1.4. Assessment of the Reforms

The process of decentralization in Serbia is one of the most difficult reforms to undertake, mainly due to the unsolved territorial issues the country is facing. Of particular importance is the very negative experience with decentralization in former Yugoslavia, where a gradual decentralization undergoing since the '70s was identified as one of the factors that helped the dissolution of the state. In a multi-ethnic state faced with secessionism, the territorial organization easily becomes a matter of high-level politics. The Kosovo problem threatening the territorial integrity of the country completely blocked the reform of the territorial organization. The few changes introduced in 2002 through the Omnibus Law on Vojvodina were a product of a delicate political moment in which, due to the conflict between the DSS and the DS, the Hungarian minority party's support to the government became indispensable allowing the party to push forward the Law on Autonomous Provinces. Too high levels of

[212] Simić, 2001.

conflictuality over the issue first caused a delay in the constitutional reform (see the previous sections) and hampered any effort to move away from the status quo. The constitution from 2006 left the problem unsolved, and it still remains so.

To the particularly negative domestic asset we shall add the lack of the international actor's credible action in the promotion of the rule. As the territorial organization of the government is usually settled through the constitution, the international actor insisted on the more general constitutional reform. Moreover, the sensitivity of the question, seen its link with the Kosovo issue, contributed to make any promotion of the regionalization a sensitive political issue.

As far as the units of the local self-government are concerned, some positive developments were registered and a series of legislative acts adopted since 2000 slowly and gradually increased the powers, competencies and independence of the municipalities. However, as we saw, the stakeholders at the centre succeeded in keeping control even after the decentralization reform. The decentralization that saw the power moving from central to local-level authorities was combined with the strengthening of the party control over the individuals occupying the position of the local authorities.

The international actors were more influential in the process of the strengthening of the local municipalities than they were in promoting the regionalization. The adoption of the Law on the Local Self-government, but also the introduction of the right to own property, can be counted as a success by the IA combined with the domestic change agents pushing for the reform and, in 2002, with the strong delegitimization of the existing status quo. However, the loopholes in the 2006 constitution and in the Law on Local Elections showed how the domestic actors can avoid the effects of the rules adopted by obstructing the implementation (the case of the financial autonomy) or by using the legislative loopholes to annul the effects of the introduced change. In some aspects we might argue that the legislative changes introduced in December 2007 represented a step back, as instead of the narrow competencies of the institutions controlled by the citizens it introduced institutions with larger competencies and far lower democratic legitimacy.

6.2. Macedonia: A Key for the Inter-Ethnic (Lack of) Peace

6.2.1. General Problems, Earlier Periods, OFA Agreement and Constitutional Changes

The decentralization and territorial organization in the multi-ethnic societies are often strictly linked to the status and position enjoyed by the different ethnic groups. Such link is even stronger when the territorial concentration of the ethnic groups allows for conceiving decentralization as an inter-ethnic power-sharing mechanisms, and when the autonomy of the territorial unit becomes the synonym for the autonomy of the ethnic group. This was precisely the case in Macedonia, where the ethnicization of the debate over the decentralization made the political temperature rise almost to the point of new ethnic violence, threatening the entire process of peace-building. Consequently, as we will see, the involvement of the international community was crucial in ensuring that the disputing sides maintain their commitments.

Even prior to the 2001 ethnic violence and the Ohrid agreement, the local self-government issue in Macedonia attracted the attention of the international actors. The lack of implementation of the 1995 Law on the Local Self-government and of the European Charter of Local Self-government (signed and ratified in 1997) resulted in strong criticisms expressed by the CoE in its reports. The failure to properly put into practice the mechanisms for accommodating the Albanian ethnic minority as envisaged by the legislation, the lack of financial resources and the growing economic pressure on the Albanian majority municipalities after accommodating the flux of the refugees in 1999, all these contributed to the escalation of the 2001 conflict. The decentralization and the greater local autonomy were among the main requirements from the Albanians during the armed conflict in 2001. Unlike decentralization as part of the administrative and public service reform aiming to meet the citizen's needs, and unlike decentralization as a reform bringing the power closer to the citizens, unlike decentralization as a process of the re-distribution of power between the local and central elite, in Macedonia's case decentralization meant power-sharing between two ethnic groups. Since the 2001 violence and the signature of the Ohrid agreement, the decentralization became a key question in Macedonian political life and a core stone of the international activity and pressures in Macedonia.

Disappointed with the failure to establish a multi-ethnic state in Bosnia, the international community became increasingly reluctant to the territorial autonomy requirements advanced

by the Albanian nationalist forces in the negotiations for the cessation of fire in 2001. Seeking the solution for the post-conflict Macedonia, some civil principles, values and approaches prevailed over the ethnic ones and the territorial solutions to the ethnic issues (prevailing in the Dayton agreement) were replaced by the effort to maintain the civic features of the state (see Bieber, 2004). The Ohrid Framework Agreement thus underlined that there are no territorial solutions to ethnic issues, that Macedonia's territorial unity can not be questioned and that the solution of the ethnic controversies are to be found through the empowerment of the local self-government (OFA, basic principles, 1.2 and 1.5). In line with the conception of the power-sharing mechanisms as instruments for the inter-ethnic peace[213], the decentralization became a mantra through which the inter-ethnic tensions in Macedonia were to be solved. The autonomy of the units of local self-government was supposed to bring the decision-making process closer to the citizens, this way encouraging the participation of citizens to the democratic life and allowing the local development and promotion of the respect for the communities' identity (see Dimitrova, 2004).

Yet, as we will see, until the present days, the decentralization process did not bring to the settlement of the inter-ethnic tensions. On the contrary, by building in the very OFA the instruments ensuring the ethnicization of the issue, the decentralization was, and continues to represent, a source and example of further institutionalization of ethnicity.

The problems that marked the introduction of the constitutional amendments offered the first concrete demonstration of the difficulties that Macedonia will (continue to) face. Even though the amendments to be introduced were already agreed upon and precise wording included in the OFA, even though the political parties that signed the peace agreement enjoyed enough support in the parliament to ensure the adoption of the changes, still the constitutional reform in Macedonia did not go as smoothly as predicted (see the section on the constitutional reform).

The constitutional amendments prescribed by OFA included, among others, two that concerned the territorial organization of the country. The 14th amendment related to the article 114 aimed to ensure the minority's veto for the issues concerning the local self-government, territorial organization, local finances, local elections and the city of Skopje, while the 15th amendment related to the articles 115 and 117 gave a broader definition of the competencies of the local self-governmental units. The adoption of the Law on the Local Self-government, Law on Local Finance, Law on Municipal Boundaries, with the general guideline

[213] See for example Lijphart, 1984, or Malevska, Hristova and Ananiev, 2007.

principles for the content of the legislation and the time table for the reform, were all included among the central parts of the OFA's annex B concerning the agreed legislative modification.

The electoral strategy of VMRO, which was then in force, contributed to the prevalence of the nationalistic rhetorics in the public debate dedicated to the ratification of the OFA and the adoption of the constitutional amendments. In such asset, even though decentralization was not the central point of the debate on ratification (see the section on the constitutional reform and the section on the minority rights), it was still mentioned as one of the issues rising the concern of the Macedonian majority. The main fears expressed during the public debate over the constitutional amendments concerned decentralization as a possible "step before federalization" and, seen the "Balkan experience", as a threat to Macedonia's unity, sovereignty and territorial integrity. What Macedonians feared the most was a potential "Kosovo" in western Macedonia.

6.2.2. The Reforms of Territorial Organization

These fears of decentralization considered a step short of territorial disintegration re-emerged a few months later, during the discussion over the Law on the Local Self-Government. The draft law was prepared by the Ministry of Justice, headed by the Albanian minority party, and represented an effort to maximize the relatively vague instructions built in the OFA. Beside the provisions concerning a transfer of the competencies in the health care and education policy areas to the local level, the Macedonian majority was also dissatisfied by the inclusion of the concept of "common administration". The "common administration" concerned the mechanism for cooperation and association of the local communities among themselves. While advocated as a solution for strengthening the local self-government and as a solution to the problem of the financially weak communities, it was perceived by Macedonians as an instrument introduced by the Albanian nationalists with the aim to bring the de facto regionalization of the country. Through the "common administration", the concentration of the Albanian minority in the western parts of the country would result in the creation of autonomous territorial areas under the Albanian domination, which further on, through the scenario of pressures and possible violence, could advance the requirements for the federalization and cantonization.

As the Albanian parties showed lack of will to seek for consensus, a new political crisis on ethnic grounds emerged. The international community was forced to mediate the negotiations and a special EU envoy was engaged to find an acceptable solution for both ethnic groups.

The inclusion of the rule adoption among the necessary (but yet not sufficient) conditions for the so long-awaited for donors conference contributed to the adoption of the law at the end of January 2002 (See Gaber Damjanovska and Jovevska, 2002).

The adopted law gave large competencies to the local self-governments in the fields of public services, culture, education, social welfare, health care, environment, urban and rural planning, economic development and local finance. Unlike the previous legislation, that did not give the local level any financial independence, it envisaged, in line with the OFA, that the Law on the Local Finance would be adopted in order to give the municipalities a large economic independence. Seen the low level of development and the lack of institutional capacities of the existing municipalities, it was decided that the newly assigned competencies shall be passed from the central to the local level in 2004. In the meantime, the Law on the Fiscal Decentralization, the Law on the City of Skopje, the harmonization with the sectoral legislation and, most importantly, the Law on the Municipal Borders, were to be adopted in order for the effective decentralization of power to become functional.

Even though according to OFA the Assembly was supposed to "adopt a revised Law on Municipal Boundaries by the end of 2002, taking into account the results of the census and the relevant guidelines set forth in the Law on the Local Self-government", the decentralization process was postponed due to the unfinished census of the population (completed only in December 2003). This delay in respecting the schedule prescribed by OFA raised malcontent among the Albanian population and was used by the Albanian opposition parties for delegitimizing DUI (the Albanian party in the government). In the effort to gain support from the unsatisfied Albanian population, these parties used the nationalistic rhetorics to further ethnicize the problem and to accuse DUI for betrayal of the Albanian national interests. This increased the pressure on the Albanian ruling party by limiting its possibility to give concessions to its Macedonian counterpart and forcing it to increase its requirements[214]. The maximization of the Albanian requirements (the calls for cantonization, federalization, Albanian right to self-determination and even threats of violence were heard) contributed to the radicalization of the Macedonian positions, nourishing the majority's fear of decentralization.

[214] Yet, it is possible to argue, in line with the dynamics of the two-level game described by Putnam, that such situation actually increased DUI's bargaining power towards Macedonians. The argument here is that the pressure exercised by the Albanian oppositional parties, whichever its effect on DUI's bargaining power, made it impossible for DUI to follow any logic other than the ethnical one.

The discussion on the territorial organization was thus ethnicized even prior to the beginning of the discussion on the law, and it became perceived as the life-time opportunity for pursuing the ethnic and party interests by the parties involved in the process. In Macedonia, the Law on the Municipal Boundaries was seen as a mean to pursue the ethnic interests, the units of self-government being perceived not as units of the *citizens'* self-government, but as units of the *ethnic groups'* self-government. The whole debate on the territorial organization was conducted on the grounds of what the party leaders claimed to be the interest of their ethnic group, the solutions being proposed and opposed only in light of their capacity to satisfy the "vital ethnic interests".

Such prevailing of ethnical rather than political, economic, technical, administrative concerns in the process was, at least partially, a consequence of the inadequate solutions built in the peace agreement. Even though the OFA prescribed that the boundaries of municipalities shall be drawn by the local and national authorities with the international participation, even though it envisaged the local self-government as the *civic question* concerning the principle of good democratic governance, the peace agreement, through some provisions, brought the demographic composition of the future municipalities to the centre of the debate on the territorial organization. It linked the law adoption with the census and its results and linked the language usage and the decision-making procedures on the local level with the ethnic composition of the community. Last, and most important, the application of the Badinter qualified majority to the adoption of the laws concerning the territorial organization "implicitly introduced organization as a key for the solution of the intra-ethnic conflict" (Malevska, Hristova and Ananiev, 2007, p. 33).

This way, to the almost inevitable partisan calculations (the incentive to drive the municipal borders in order to maximize the cross-municipalities distribution of electoral support), and to the conflict on the horizontal distribution of power between the different levels of government, the strategic usage of the nationalistic rhetorics and the implication the law had on the inter-ethnic balance of power were added, contributing to a situation in which the agreement over the municipal borders was almost impossible to achieve.

The two largest Macedonian parties, the then ruling SDSM and oppositional VMRO, did not succeed in finding a common position, the main conflict between them being the size of the municipalities (SDSM required fewer bigger units, VMRO pushing for more smaller units). The VMRO, a party with an already pronounced nationalistic agenda, took the side of the

Macedonian citizens, who would find themselves as a minority in the Albanian municipalities, and as there was no agreement with SDSM, they strongly campaigned against the proposed solution. On the Albanian side, the ruling DUI had a problem with the other Albanian parties that were advancing extremistic requirements and that continued to criticize the government for neglecting the interest of Albanians. Both the Albanian and the Macedonian opposition used the nationalistic propaganda in their effort to channel the malcontent to gain support.

After difficult negotiations behind closed doors, the ruling SDSM and DUI found an agreement over the draft proposal. "No experts on decentralization, public administrators or citizens were invited to take part to the talks" (Trajkovska 2004, p. 3), and "even members of the SDSM presidency were excluded" (Karakamiševa 2004b, p. 3). After the first meeting, "it became evident that the discussion on redrawing the territorial boundaries would remain behind closed doors" (Dimitrova 2004). The municipal borders proposed by the draft strongly reflected the ethnic conception and political pressures. Thus, for example, following the strong pressures made by the Albanian Diaspora on Ali Ahmeti, leader of the DUI, to pursue either the federalization, or at least an increase of the Albanian minority share in the communities of Struga and Kičevo[215], the rural communities were added to these two cities in order to increase the percentage of Albanians.

The draft law agreed by the government caused a reaction almost similar to a riot. The domestic NGOs and experts strongly criticized the prevailing of the ethnical over the economic and organizational criteria. They underlined that the proposed solutions failed to ensure the functionality and efficiency of the local communities and criticized the un-transparent manner in which the law was drafted. Such procedure for the adoption of the law was claimed to be against the OFA (requiring the inclusion of the local authorities in the process of the adoption of the Law on the Municipal Borders), and also against the European Charter on the Local Self-government that, in the articles 4 and 5, clearly required the consultation of the local authorities in the decision-making process for all matters which concern them directly, and, explicitly, in the case of changes in the local authority boundaries.

The law draft was put on public discussion, during which the malcontent of the municipalities became evident. In both Kičevo and Struga, referendum on a local level were organized and the Macedonians expressed themselves against the law (the Albanians boycotted the referendum), but without success in influencing the political elite's decision. The opposition parties, trying to use the local pressures and malcontent against the

[215] See Gaber – Damjanovska e Jovevska 2004.

government, succeeded in getting a new turn of negotiations open, but no agreement was found. The oppositional VMRO was requiring the maintenance of the status quo in the territorial organization, arguing that a change would bring to the federalization, while the Albanian parties were requiring bigger and fewer units similar to those that existed in the socialist Macedonia.

After difficult negotiations, the law was adopted in August 2004, with a very narrow majority in the assembly (61 out of 120 votes), succeeding to attract the support of the ethnic Albanians. The law prescribed the creation of 81 local communities, and was criticized to be designed on ethnical grounds and without taking in consideration the economy, landscape, urban-rural characteristics. Some of the adopted solutions undermined the functionality and development of such even "unnatural" municipalities established by the law from the very beginning, according to the opposition.

The result of the elitist approach to the rule adoption was an overspread malcontent, in Struga and Kičevo even a riot requiring action by the police. In no time the citizen's initiative for the referendum to abolish the law was on the table. Unfortunately, the loudest criticisms against the bad solutions we described above did not concern the lack of a democratic process and/or the failure to adopt some more efficient solution based on civic principles. Ironically, it was the oppositional VMRO, unsatisfied for being excluded from the decision-making process, together with other nationalistic forces to ethnicize the referendum, using the nationalistic rhetorics to criticize the borders drawn on ethnic principles. They claimed that the Law on Territorial Organization pushed the country into federalization and disintegration. Such thesis was easily defended by reminding the Albanian threats with violence and calls for the Albanian right to self-determination expressed prior to the rule adoption. The final stroke to the national pride of the nationalists was the decision to include the periphery communities into the city of Skopje in order to ensure that the capital fulfills the conditions for bilingualism. It was no surprise that more than 60% of the Macedonians found the law unacceptable, and thought that the law represented a threat to the partition of Macedonia (believed by 70% of Macedonians), a position that, according to the public opinion polls, in more than 50% of the cases was influenced by the media, the political parties and their leaders[216].

The reaction of the Albanians to the initiative for the referendum was equally violent. The legislation adopted was still preferred to the status quo, and, seen the distribution of power

[216] See Gaber Damjanovska and Jovevska, 2004.

and preferences, any better solution would be almost impossible to obtain. In such asset the Albanians advocated against the referendum, some even threatening "serious consequences on stability and peace" if the law was withdrawn.

The referendum called for November the 7th 2004 was annulled due to the low turnout. Such a result was a direct consequence of the international actor's campaign against the referendum, of the strong pressures and conditioning on "Macedonia's future", and, most importantly, of the historic decision of the USA, brought on November the 4th, to recognize Macedonia under its constitutional name[217].

Thanks to the international intervention, the referendum smoothly passed and Macedonia was finally starting the implementation of the decentralization process. The first step to be taken was scheduling the local elections that would allow the formation of the bodies of the local self-government, local councils and majors. In the light of the coming increase of competencies and fiscal autonomy, the local elections of 2005 represented an important stake for all participants, which was probably one of the causes inducing the political parties to use any mean available, irregularities and even violence included, in order to ensure their victory. In the part devoted to the electoral reform, we will see how it was precisely due to the political parties' behaviour and serious breach of the electoral norms that the international community, again, was forced to intervene.

After the establishing of the elected bodies in the municipalities, the difficult process of implementation started. Lack of competencies and resources and the incapacity of many municipalities to cope with the new powers were the main obstacles to the implementation process. Some municipalities were not even able to ensure the collection of taxes, and some were on the verge of bankruptcy. The lack of institutional capacity at a local level and the financial problems were significantly slowing the process down, especially in the field of the fiscal decentralization.

As far as the results are concerned, the research on the power-sharing mechanisms between the different levels of government undertaken by Maleska, Hristova and Ananiev showed that unclear and long bureaucratic procedures, combined with financial problems, continued to represent a source of strong central control over the local government. The channels of communication and problem solution thus follow the party lines, the only municipalities successful in communicating with the central level being those whose mayors were from the ruling political parties. Such "strengthening of the party-state compromises the

[217] See Dimitrova 2004, Gaber Damjanovska and Jovevska, 2004.

very idea of the decentralization" (Maleska, Hristova and Ananiev, 2007, p. 38). The mayors coming from the opposition, being obstructed in their work by the central government, are induced to criticize the government for obstructing the decentralization, a tactic often combined with the nationalistic rhetorics. For example, after being excluded from the central government in 2006, DUI used its mayors to press the central government, bringing to the ethnicization and politicization of the issue. By obstructing the decentralization process, hampering the implementation of the Law on the Local Self-government, marginalizing and pressing Macedonians in the municipalities with DUI majority, they succeeded in creating a new crisis that was solved, as usual, with the "difficult question of vital national importance", in closed-door negotiations. The controversial "May agreement" was reached, apparently with the international community's mediation (see the section on the constitution and the section on the minority rights, see also Gaber-Damjanovska and Jovevska, 2006).

6.2.3. The Role of the International Actors: a Decentralization from Outside

The role of the international actors in the decentralization process in Macedonia was decisive. The link between the decentralization and the inter-ethnic relations and its centrality in the peace-building process brought the territorial organization to the center of the attention of all actors involved, both domestic and international.

Beside the official conditionality that linked the implementation of the OFA to the membership and integration in the various international organizations, an important role of the IAs consisted in their endless efforts and engagement in negotiation and mediation between the ethnic groups in all phases of the rule adoption. Strong financial incentives (decisive seen the serious financial austerity in Macedonia), as well as political incentives were used as rewards to be immediately delivered, this way increasing the credibility of the international actor's actions (see Tables 1 and 2 in the appendix). Beside the consultative and mediatory role of the EU representatives, in Macedonia's case we recall the donor's conference that, after it became obvious that the Law on the Local Self-government was increasing the ethnic tensions making the agreement difficult, was used to push forward the rule adoption. We also recall the strong message the EU sent to the Macedonians prior to their referendum on the Law on the Municipal Borders, and, last but not least, we recall the

importance of USA's recognition of Macedonia under its constitutional name 3 days prior to the referendum[218].

The pressures were combined with significant material incentives and financial support for the process. The EU's financial assistance, but also the World Bank, UNDP, Sida, DfiD, USAID, Australia, Finland, The Netherlands and Germany financed the projects aiming to help the development and strengthening the municipalities in order to prepare them for the obligations and tasks deriving from the increased powers. The decentralization was one of the biggest points in the CARDS budget dedicated to Macedonia, particularly in 2002, 2003 and 2005, when it absorbed more than 20% of the whole CARDS financing. The main goal concerned the building of the local infrastructure and the building of the administrative capacity in the municipalities. Such collocation of the resources is quite in line with the statement given by the EU's special representative Alexis Bruhns during the crisis created by the lack of agreement over the territorial organization of the country:

> "EU is ready to pay for local community personnel training, to teach them how to implement the budget, to finance some equipment for the communities, but it is necessary to know the exact number of communities and which shall be their territory" (Utrinski Vesnik, 25 December 2003).

The role of the international actors in the process is well illustrated in Bruhns' statement: what mattered was that the Ohrid Agreement and decentralization, perceived as a guarantee for peace and stability, were implemented as soon as possible. This necessity to search for quick solutions guaranteeing the peace in the country induced the international actors to legitimize the bargaining and log-rolling approach of the Macedonian elite instead of pressing for transparency and more inclusive discussions. The concerns of potential destabilization that would derive from the failure to adopt the law and, further on, from the possible blockage of the referendum, induced the International Actors to tolerate the serious breaches of both OFA and the European Charter on Local Self-Governments in the procedure of the rule adoption. This allowed the leaders of the ruling coalition to draft one of the most important legislations in the process of decentralization without taking in consideration the position of the local authorities (as strictly prescribed by the Articles 4 and 5 of the Charter on Local Self-Government), the position of the civil society and the advices of the domestic and

[218] It is important however to underline that in case of referendum, unlike with the elections, the international community remained mainly silent on the serious breaches committed by the government in order to bring to the annulment of the referendum. Thus, according to Slaveski's testimony (2004), the employees of the ministry of labor and social welfare were sent to visit the users of the state's assistance (granted to the poor) to threaten them that in case they go out to vote, they would see their state assistance cut away (p. 34).

international experts (as it was required by the OFA). As Dimitrova reports, the EU representative in Macedonia, Sheena Thompson, stated that she was constantly in touch with the coalition partners and gave advice if necessary, but "it's all in the hands of the ruling elite." When asked to address the exclusive and non-transparent nature of the discussion, the EU representative answered: "these (the coalition partners) are the chosen representatives on behalf of the citizens" (situated in Dimitrova, 2004, p. 174).

6.2.4. The Decentralization: Assessment

In the previous chapters we traced the process that brought to the adoption of the most important documents in the field of decentralization. It was, as we saw, a process strongly influenced by the international actors, EU being the most important actor present in all negotiations between the parts engaged in the debate over the law draft.

The exit of this extremely difficult and untransparent process of decision-making, as we saw, was an agreement that sacrificed the municipalities' interests to the ethnical and political interests. Some of the municipalities are still underdeveloped and incapable of achieving fiscal autonomy, this way hampering the implementation process, a direct consequence of the prevailing of the ethnical principle over the strategic approach to the design of the municipal borders. Further on, as underlined by the Macedonian researchers, the functioning of the local municipalities is strongly influenced by the party's relationships between the local mayors and the ruling government, blocking the development and the functioning of those municipalities where the opposition is at the power. In the Council of Europe's Congress of Local and Regional Authorities' report on Macedonia, we find underlined that while the legislative framework is fully in line with the European standards, the implementation is still difficult as the by-laws de-facto reduce the levels of autonomy guaranteed by the Law on the Local Self-government.

Another point of concern is the ethnicization at the local level, as both the language usage and, more importantly, the voting procedures are in function of the ethnic composition of the community. While such solutions are preferred by the nationalistic elites, the descent of the ethnic conflict to the local level too creates a situation where the usage of the nationalist rhetorics is a convenient strategy to follow. The decentralization is easily politicized and interpreted in the ethnic key, which increases the tensions between the ethnic groups. An illustration is the complete absence of issues such as "the balance of power between the central and local government" or "the accountability function of the local self-government"

from the debate. Even in those cases where the debate rose about how large the local government's powers shall be in the health and education sector, the discussion was guided mainly by ethnic concerns and divided Macedonians (proposing a more centralized model) and the Albanians (requiring as large an autonomy as possible). The questions of the distribution of power between the different levels of governance came onto the agenda only recently in the implementation phases, where the central government showed the reluctance to share its powers with the lower units.

Such sub-optimal solutions in the field of the territorial re-organization of the Macedonian system of governance can be explained by the sub-optimal settling of the factors of the revised EUCLIDA model influencing the decision-making process.

On the supply side, we have the international actor who, perceiving the domestic situation as potentially destabilizing, is pushing the domestic elite to search for a solution to what emerged as a key sector: decentralization. The conflictuality of the issue and potential threats to stability brought to the prevailing of security concerns over the necessity to ensure the respect for the democratic and international standards, especially in the process of the rule adoption. The choice of the instruments for the rule promotion also reflected the IA's concern and preference for a quick solution of the problem: in a joint action of a series of international actors, all means and strategies were implied: positive and negative conditionality (we can consider the ad-hoc inclusion of the adoption of the Law on the Local Self-government among the conditions for the donors' conference as a negative conditionality), official pressures on the country as well as unofficial pressures on the single politicians, mediation in negotiations and advisory role, the financial support and external guarantee increasing the credibility of the commitments made.

On the domestic side, we can observe how almost no change agents committed to decentralization as a mean of good democratic governance could be found among the main actors included in the process. The decentralization was an obligation deriving from the peace agreement and was mainly required by the Albanian ethnic minority, but was also supported from other political forces as all actors perceived the need for change. Yet, as we saw, the priorities leading the process were mainly ethnically based. While some local authorities, domestic experts and NGOs tried to push forward more efficient solutions based on the civic and technical approach to the question, their voices were covered by the sound of the nationalistic mobilization around the issue. Surely, seen the mis-confidence nurtured for

almost ten years since the independence, seen the 2001 ethnic violence and the events in the neighbouring Serbia, and most importantly, seen the radical requests of the Albanian nationalists that did not hesitate to threat with more violence, it is no surprise that the territorial organization was mainly seen as a question of inter-ethnic relations. The opportunity to increase the institutional administrative capacity or to favour the participation and good democratic governance did not find their place in the debate over the decentralization process. The political elite, instead of calming the ethnic passions and offering a more civic interpretation of the issue, opted for the most profitable solution: the use of the nationalistic rhetorics, in some cases even including open threats, in their short-term calculations on gaining electoral support.

Before concluding the analysis of the decentralization in Macedonia, a remark on the veto-players shall be made. Even though the nationalistic rhetorics was more pronounced in the discourses of the rightists, traditionally considered more radical nationalistic parties, yet, it is difficult to assert to what extent such behaviour was part of the political strategy aiming to delegitimize the political opponents, rather than an action aiming to obstruct the decentralization process. An example is the behaviour of DUI, a political party that while in the ruling coalition (2002-2006) exercised an important role in calming the tensions created by the extremist statements by the, then oppositional, Albanian parties. After the 2006 parliamentary elections, even though it was the strongest party of the Albanians, it was not called into the government by the VMRO that preferred a coalition with the politically more compatible PDP. The reaction of the DUI consisted in strengthening the nationalistic rhetorics. They claimed that the Albanian rights were being neglected by the government, started discriminating the Macedonians in those municipalities where DUI had the majority, and advanced a list of requirements to be adopted "in order to improve the Albanian rights", some of which unacceptable for the civil state and representing a definite step towards the ossification of the ethnic cleavage. At the same time, we can notice how the VMRO played the role of the veto player obstructing the process of decentralization only in the second phase of the settling of the legislative framework, when the party was at the opposition. This casts new light over the "veto player"-"change agent" concept in Macedonia's case. Unlike in Serbia, where the strong veto players obstruct the reform due to their interest in maintaining the status quo, in Macedonia the obstruction of the decentralization, rather than a *goal*, appears to be a *mean* for pursuing other political interests. The government continues to play the role

of the change agent, the opposition, independently from the content of the law, obstructs the reform. In the conclusions we will turn back to this particularity of the Macedonian political life, exploring the causes and implications of such strong link between the roles played by the actors and their preferences.

6.3. A Comparative Assessment

As we saw in the sections above, the decentralization process was one of the most salient dimensions of the political conflict in both the studied countries and represented one of the most difficult questions to tackle. In both cases the decentralization (and in Serbia's case regionalization) was conceived as strictly linked with the inter-ethnic relations, rising concerns and fears of secession. Yet, while Macedonia was working hard on the decentralization reform since 2001, Serbia delayed the reform until the end of 2007, meanwhile solving urgent problems through ad hoc solutions. The Serbian "reformist" effort of 2007, however, failed to face the problem of Vojvodina's status, regulating only the less conflictive questions of local self-government.

The two countries do not only differ in their devotion to the reform, but also in the quality of the adopted legislation. While in Macedonia's case the legal framework does allow large autonomy (the obstacles are mainly identified in the implementation process), in Serbia we observe the reluctance to shift the power from central to local level. The decentralization was thus combined with the further strengthening of the central party's leadership's control over the deputies in the municipal assemblies.

The differences between the two countries can be explained by the factors of the EUCLIDA model (see the Tables 5-10 in the appendix). The EU was much more credible in pushing the decentralization reform in Macedonia than in Serbia. Very strong conditionality (both the integration with EU and more immediate rewards like access to the CARDS funds) and the salience that the issue had for the EU (more than 20% of the total EU financial assistance was for decentralization) can be explained by the EU's belief that decentralization is a mean for settling intra-ethnic conflict and for guaranteeing the security which appears as the main EU concern. This also explains the EU's tolerance for the un-democratic procedures and the acceptance of sub-optimal solutions. The most clamorous example of the lack of respect of the democratic procedures tolerated by the EU concerns the failure to consult the

municipalities in the law-drafting process (obligatory under both the OFA and the CoE Carter on Local Self-.Government) and the violations of the procedures and even large-scale intimidations that took place during the 2004 referendum.

Table 1: "The decentralization in Serbia and Macedonia, most relevant factors"

	Serbia		Macedonia
	2002	2007	
IA active:	CoE.	EU.	EU (NATO, OSCE).
IA's interest in the field:	Democratization.	Democratization.	Security.
Conditionality with important reward:	Present.	Weak.	Very Strong.
Did the IA tolerate the undemocratic behavior:	-	-	Yes.
Domestic Change Agents:	Present, strong.	Present, weak.	Present, strong.
Input for the change:	Domestic and international.	Domestic (constitutional reform).	Domestic and international.
The compliance with IA's recommendations:	Rule adoption, difficult implementation.	Partial compliance.	Good compliance.
Outcome:	The norm adopted. Implementation obstructed.	The norm adopted, the shortcomings build in the legislative framework annul the effect of the change.	The reform implemented. The legislation allows for the further ethnicization of politics.

The importance of the International actors in pushing the reform is confirmed in Serbia, where we can notice the difference between the two periods (2002 and 2007), as well as in comparing the legislation on the local self-government and the lack of decision on the status of the AP. Both legal acts adopted in 2002 were strongly recommended by the international actors and made a condition for the CoE membership, while in the case of the 2007 legislation the strengthening of the municipalities was only indirectly mentioned in the priorities, as part of the constitutional reform. Finally, the Autonomous Provinces' status does not even find its place in the Commission reports since 2005. The EU's decision to decrease the pressures for the regionalization in Serbia can be also explained as a security-guided decision, as the unsolved problem of Kosovo's status, salience and conflictuality of decentralization as a dimension and the growing nationalism made regionalization a very delicate question to tackle.

The factors on the domestic level also differed between the two countries: in Macedonia's case, the presence of a strong change agent interested in pushing the changes forward (the Albanian ethnic minority) ensured that the international actor's action is complemented with inner pressures. But while on the one hand successfully pushing forward such change, on the other the interests of this domestic actor influenced the debate and the interpretation of the issue (resulting in the ethnicization of the process and the solutions following the ethnic logic). The importance of the domestic change agents for pushing difficult reforms is also confirmed in Serbia's case, where the adoption of the Omnibus Law on Vojvodina was mainly a product of the intimidatory capacity of the Hungarian minority party.

Finally, it appears useful to recall the level of legitimacy of the rule existing. If we compare the laws adopted in both Serbia and Macedonia, we can notice how the most democratic in both procedure and its content was the Law on the Local Self-government adopted in 2002 in Serbia. Such result is no surprise seen the relatively positive settling of all factors we identified: the IA, guided by the democracy promotion interest, offered a credible, not distant in time reward (CoE membership), using both conditionality and socialization channels (by offering experts and consultants) to bring an issue onto the domestic agenda in a moment when the delegitimization of the status quo and the relatively mild level of conflictuality compensate for the weak domestic change agents.

APPENDIX

Table 2: "EU assistance to the decentralization process in Macedonia".

Year	Amount	Purpose	
2001	10,5	Small infrastructure for local self-government. Repair-reconstruction of the local infrastructure. Conditioned: implementation of the OFA.	
2002	14	Small scale infrastructure for local self-government.	Conditionality deriving from the Multi-annual indicative program 2002-2004: The help in development in local infrastructure will be conditioned with the adoption of the Law on the Local Self-government and creation of the appropriate legal framework for the decentralization process.
2003	9	Implementation of local infrastructure projects; Training and capacity of building local government institutions.	
2004	8.5	Local infrastructure development.	
2005	8.7	Support for the decentralization process (2 mil). Development of local infrastructure (6.7).	Conditioned: the decentralization reforms and a commitment on the part of government to allocate resources and personnel to facilitate the process.
2006	5.4 mil	Support to decentralization process.	Conditioned: the decentralization reforms and a commitment on the part of government to allocate resources and personnel to facilitate the process.

Source: European Agency for Reconstruction, IPE documentation 2007.

Table 3: "EU priorities in Macedonia".

2002	Ensure smooth implementation of the decentralization process through offering the appropriate means to the central state bodies to manage the process, and developing the capacity of local self-government bodies to undertake the transferred responsibilities.
2003	Adopt the legislative framework which will ensure smooth implementation of the decentralization process through offering the appropriate means to the central state bodies to manage the process, and developing the capacity of local self-government bodies to undertake the transferred responsibilities. Partnership with citizens associations and a serious communication program will help the smooth implementation of the decentralization process.
2004	Implement the legislation already adopted to implement the Framework Agreement (FA). Adopt remaining legislation required by the FA, in particular adopt and implement the Laws on the Territorial Organization, Municipal Finance and the City of Skopje. Achieve rapid progress in the implementation of the decentralization process to allow proper local elections as scheduled, in particular strengthening the municipalities' capacity in financial management and management of transferred competencies and assets through training, consultancy and provision of equipment. In parallel, strengthen administrative capacities to supervise and facilitate the decentralization process, including at central level, in particular of the Ministry of Local Self-Government and of the Ministry of Finance in relation to fiscal decentralization as well as the line ministries in their own areas of competence. Ensure that appropriate budgetary resources are allocated in order to ensure a smooth transfer of competencies.
2006	Complete the necessary legislative framework to implement the decentralization process and ensuring that municipalities have the necessary means to implement their new competencies.
2007	Strengthen the transparency and accountability of the local administrations. In particular, strengthen internal control and audits. Establish a satisfactory standard of municipal tax collection throughout the country. Develop the capacity of municipalities to manage state-owned land. Ensure that the number and competence of staff of municipalities are sufficient

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia.

Table 4: "EU priorities and decentralization in Serbia".

Report 2002	Promised decentralization and reforms of provincial and local government should be implemented, as well as other constitutional revisions.
Report 2003	Promotion of effective decentralization and participation. Preparation of local government; promotion of civil society participation (indirectly: constitutional reform).

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia.

Table 5: "EU support to municipalities and administrative decentralization in Serbia".

2001	5 millions	Municipal support program.	
2003	35 millions	Municipal support program, Municipal Improvement and Revival program, Municipal Infrastructure Agency support program.	
2004	21.5 millions	Technical assistance to main municipal related actors; Regional cooperation among municipalities.	
2005	20.7 millions	Municipal support programme.	Conditionalities : About 13 millions are conditioned with the cooperation of the Ministry for state administration and local self-government in the implementation of the programs.
2006	20 millions	Municipal support programme	Conditionalities : the cooperation of the Ministry for state administration and local self-government in the implementation of the programs.
2007	22 millions	Municipal support programme	Endorsement by all key stakeholders. Appointment of counterpart personnel by beneficiaries, Allocation of working space and facilities for technical assistance by beneficiaries, Arrangement by beneficiaries of any necessary legal procedures or permits, Participation by the beneficiaries in tender processes as per EU regulations, organization, selection and appointment of members of working groups, steering and coordination committees, seminars etc. by beneficiaries, Appointing the relevant staff by the beneficiaries to participate in training activities etc. Availability of co-financing where required.

Source: European Agency for Reconstruction, IPE documentation for 2007.

Table 6: "The decentralization in Macedonia, external factors" (author's elaboration).

	Decentralization: Amendments 2001, The Law on the Local Self-government (2002),	The Law on Local Boundaries (2004)
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	Yes, donors' conference.	Yes, name issue.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	No.	Yes.
Was the issue part of the EU ***key*** short-term priorities?	No.	No.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	Yes.	Yes
Amount of the EU financial support to the reform in general:	24,5 millions of euro, of total 102,9 EU assistance to Macedonia in 2000 - 2002.	42 millions of euro, of total 184.4 EU assistance to Macedonia 2000 – 2004.
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	23.8%	22,77%
Reform perceived by the IA as:	Mean of the inter-ethnic peace.	Mean of the inter-ethnic peace.
The main concern guiding IA's intervention in the field:	Peace keeping (security).	Peace keeping (security).
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X	Yes (referendum).
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.
Were the recommendations made by the IA accepted?	X	X
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	X	X
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	No (it was the compliance with OFA to be underlined).	No (it was the compliance with OFA to be underlined).

Table 7: "The decentralization in Macedonia, domestic factors" (author's elaboration).

	Decentralization: Amendments 2001, The Law on the Local Self-government (2002).	The Law on Local Boundaries (2004)
Domestic input for the change:	Present (OFA and necessity to implement the constitutional amendments).	Present (OFA and necessity to implement the constitutional amendments).
Domestic actors pushing for the reform:	Present and strong: Albanian minority.	Present and strong: Albanian minority.
Level of conflictuality of the issue:	Extremely high (presence of violence).	Extremely high (presence of violence).
Type of the conflict and main line of the conflict:	Intra-ethnic and inter- party.	Inter-ethnic and inter-party.
Did the issue concern the deep divisions in society?	Yes (inter-ethnic).	Yes (inter-ethnic).
Type of the issue (salience - positional):	Salience.	Salience.
The main beneficiaries of the status quo:	Central government.	Central government.
The main beneficiaries of the change:	Albanian ethnic minority, local government.	Albanian ethnic minority.
Is the existing status quo strongly delegitimized by all relevant actors?	No (presence of the supporters of the status quo among Macedonian majority).	No (presence of the supporters of the status quo among Macedonian majority).
Two or more alternative solutions present?	-	-
Political fluidity/stability (in terms of the perspective of power of the central actors):	-	-

Table 8: "The decentralization in Macedonia, outcomes" (author's elaboration).

	Decentralization: Amendments 2001, The Law on the Local Self-government (2002)	The Law on Local Boundaries (2004)
The procedure of law drafting:	Behind the closed doors, the relevant representatives of the civil society, the municipalities and experts in the field not included in the discussion.	Behind the closed doors, the relevant representatives of the civil society, the municipalities and experts in the field not included in the discussion.
The main deficiency in the adopted legislation:	The introduction of the solutions that contributed to ethnicize the decentralization process.	The introduction of the solutions that contributed to ethnicize the decentralization process.
The main beneficiaries of such deficiencies:	Ethnic minorities.	Ethnic minorities.
The status (2008):	Rule adopted, Rule implemented (slow and difficult implementation).	Rule adopted, Rule implemented (slow and difficult implementation).
The EU comment in the 2008 report:	-	Decentralization, which is a basic principle of the Ohrid Framework Agreement, has continued. However, no progress was made in the direct funding of the tasks decentralized to the municipalities.

Table 9: "The decentralization in Serbia, external factors" (author's elaboration).

Legislation: Factors	Law on the Local Self-government, Serbia, 2002	Law package on local self-government, Serbia, 2007	Omnibus Law on Autonomous Provinces 2002	Lack of solution to the Vojvodina status
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	Yes: FRY membership in the Council of Europe.	Only indirectly (it is not made explicitly subject of the EU key short term or short term priorities, but as a part of the requirement to undertake the constitutional reform).	Yes: FRY membership in the Council of Europe.	No (since the 2005 it even ceased to be mentioned in the EU Commission's reports).
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	Yes: FRY membership in the Council of Europe.	No.	Yes: FRY membership in the Council of Europe.	-
Was the issue part of the EU ***key*** short-term priorities?	No.	No.	No.	No.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.	Not explicitly (see above).	Yes.	-
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.	No.	No.	No.
Amount of the EU financial support to the reform in general:	124.2 (the total of EU investment in Serbian decentralization 2001-2007).	124.2 (the total of EU investment in Serbian decentralization 2001-2007).	124.2 (the total of EU investment in Serbian decentralization 2001-2007).	124.2 (the total of EU investment in Serbian decentralization 2001-2007).
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	9.48%	9.48%	9.48%	9.48%
Reform perceived by the IA as:	Part of the constitutional reform.	-	Part of the constitutional reform.	The issue too delicate to tackle seen the situation in Kosovo.
The main concern guiding IA's intervention in the field:	Democratization.	-	Democratization.	-
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	-	-	-	-
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.	Yes.	-

Were the recommendations made by the IA accepted?	yes	partially	mainly	no
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	-	-	-	-
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	yes	yes	no	-

Table 10: "Decentralization in Serbia, domestic factors" (author's elaboration).

Legislation: Factors	Law on the Local Self-government, Serbia, 2002	Law package on local self-government, Serbia, 2007	Omnibus Law on Autonomous Provinces 2002	Lack of solution to the Vojvodina status
Domestic input for the change:	Present (the urgent necessity to face the problem of the municipalities)	Present (the implementation of the Constitutional Law)	Present (urgent necessity to face the problems of the Vojvodina status)	-
Domestic actors pushing for the reform:	Present, weak (municipalities)	Present, weak (municipalities)	Present, strong (the supporters of the provincial autonomy with strong influence on the government)	Present, weak
Level of conflictuality of the issue:	Mid (the ideological instance of the key actors is moderate)	High (the ideological instance of the key actors is polarized)	High	High
Type of the conflict and main line of the conflict:	Between the different levels of government	Between the different levels of government	Between the different levels of government + intra-ethnic + intra-party	Between the different levels of government + intra-ethnic + intra-party
Did the issue concern the deep divisions in society?	Yes	Yes	Yes (inter-ethnic, intra-party)	Yes (inter-ethnic, intra-party)
Type of the issue (salience - positional):	salience	positional	-	salience
The main beneficiaries of the status quo:	central government	central government	central government	central government
The main beneficiaries of the change:	lower units of government	lower units of government	lower units of government	lower units of government
Is the existing status quo strongly delegitimized by all relevant actors?	Yes	No	Yes	No
Two or more alternative solutions present?	no	-	-	Yes
Political fluidity/stability (in terms of the perspective of power of the central actors)	fluid	stable (-fluid)	fluid	-

Table 11: "The decentralization in Serbia, outcomes" (author's elaboration).

Legislation: Factors	Law on the Local Self-government, Serbia, 2002	Law package on local self-government, Serbia, 2007	Omnibus Law on Autonomous Provinces 2002	Lack of solution to the Vojvodina status
The procedure of law drafting:	Behind the closed doors, intra-party bargaining, short term party leadership	Open debate, inclusion of the civil society, representatives of the municipalities, experts and other relevant actors	-	x
The main deficiency in the adopted legislation:	The building of mechanisms that completely annul the effects of the decentralization process by strengthening the party central leadership control over the representatives in the local self-governments	-	-	x
The main beneficiaries of such deficiencies:	political parties, ruling elite			Not adopted
The status (2008):	Rule adopted (though fake compliance with IA standards)	Rule adopted, rule implemented		Not adopted
The EU comment in the 2008 report:		Legislation on local self-government, territorial reorganization, local elections and the city of Belgrade was adopted in December 2007. The changes are generally in accordance with the European Charter of Local Self-Government. However, some shortcomings remain. A specific law regulating the transfer of property to municipalities, in line with the Constitution, has not yet been adopted		

7. PUBLIC ADMINISTRATION/CIVIL SERVICE REFORM

"At a less obvious level, successful revolutionaries also inherit the wiring of the old state: sometimes functionaries and informers, but always files, dossiers, archives, laws... Like the complex electrical system in any large mansion when the owner has fled, the state awaits the new owner's hand at the switch to be very much its old brilliant self again."
Benedict Anderson, 1991.

The civil service reform is one of the key moments in the process of democratization. As Linz and Stepan (1996) argued, the consolidation of democracy is impossible if there is no suitable state bureaucracy, usable by the new democratic government. Very often, however, the administrative apparatus inherited from the previous regime is unsuitable for the democratization process, be it due to the inadequacy of the inherited administrative structure or procedures or to the lack of support of the bureaucrats faithful to the ongoing regime. The reform of the public administration in those cases becomes necessary, but at the same time it might be very difficult to undertake as it is a kind of reform that requires the state to reform itself. This brought the scholars to identify in the state apparatus and the administrative capacity (and the success of its reform) an important factor of consolidation of democracy, a very positive factor in those cases where the administrative tradition gave the new democratic elite a professional administrative apparatus on which to rely to in the democratization process, very negative in those cases where the lack of adequate bureaucracy hampered the country's administrative capacity making the implementation of all other reforms and the transition process difficult to undertake[219].

[219] "The reformers are often bound by the very rules they seek to change, and these rules are enforced by anti-reform incumbents privileged by the status quo. To succeed, reformers must find a way to use the rules of the status quo to subvert it, which involves the difficult task of inducing political actors empowered by an existing constitutional order to change the rules of the game" (Snyder and Mahoney, 1999). On the importance of the adequate bureaucracy for consolidation, see Linz and Stepan, 1996. On the administrative capacity as both a prerequisite for the implementation and the dimension of the consolidation see Morlino and Magen, 2004 – 2008.

Many students concentrated in identifying the factors that influence the civil service reform. The institutional setting, the type of inherited bureaucracy and the institutional legacies, the size and goal of the traditional public sector, the government's reform capacity, the structure of opportunities, all were used as explicative factors in analyzing the civil service reform in the democratic societies[220]. In studying the transition towards democracy, the model of Meyer-Sahling is particularly interesting as it links the civil service reform with the type of the transition of the regime and with the alternation on power. In this model, the composition of the first democratically elected governments represents an explanatory factor that determines whether the administrative reform aiming towards the de-politicization of the civil service will take place[221].

The de-politicization and professionalization of the civil service represented one of the most important steps in the dual transformation of the Central Eastern Europe[222]. Particularly in the former communist countries, where the "political loyalty was the first requirement for the recruitment", and where the tradition of open partisanship prevailed, the de-politicization of civil service became a "central plank of the administrative reform in the region" (Goetz, 2001, p. 1040).

However, in many of these countries, the de-politicization of the civil service was not undertaken due to the internal transitional dynamics that failed to produce the incentive for the "institutionalization of the restrictions on political interference into personnel policy" (Meyer-Sahling, 2004, p. 77). Moreover, the overlapping of the party building and state building process contributed to the emerging of what O'Dwyer labeled the "runaway state building", consisting in the patronage politics of the ruling elite which brings to "swelling and politicization of the administration, hobbling its effectiveness" (O'Dwyer, 2004, p. 521).

The politicization of the civil service negatively influences the administrative capacity. In the first place, by making the partisan criteria prevail over the merit-based recruitment and career advancement, the professionalism and effectiveness of the civil service are hampered. Further on, as the change of the government in these cases means the change in all managerial positions, the continuity in policy making is hampered, and the new elite cannot make profit of the experienced, know-how bureaucrats inherited from the previous government. Finally, the high level of the party control over the administration, particularly in the setting of the

[220] See Pierre, J. (1995), Wright, 1994, Knill 1999.
[221] See Meyer-Sahling, 2002, 2004.
[222] See Barlett, 1997, cited in Mayer-Sahling, 2004, p. 71.

large public sector, further opens the possibility for patronage politics, which then further hampers the quality of the civil servants and their professional integrity.

The following section will be dedicated to the civil service reform in Serbia and Macedonia, with the particular accent on the (de-)politicization of the administration. In both countries the political influence over bureaucracy revealed to be very strong. In both cases the Nineties resulted in strong incentives for the patronage politics, runaway state building and politicization of the administration, further ruining the apparatus inherited from the communism. As we will see, even though the administrative reform was undertaken, in both countries the politicization of the civil service still persists.

7.1. Serbia: Professionalization of the Politicized Administration

7.1.1. The Reform Delayed

One of the crucial issues in the process of democratization and in the development of the institutional and administrative capacity concerns the reform of the state bureaucracy. As the Serbian case taught us, the democratization without tackling the administrative reform is possible (yet not recommendable) only in the first phases, when the new democratic rules are in the phase of drafting and adoption. As soon as it comes to their implementation, the lack of an efficient, professional, depoliticized and functional administration turns out to be the most serious obstacle on the path to democratization.

The administration system inherited from the period of Milošević's regime was inadequate for the implementation of the reformist policies and very difficult to reform. Such system was a product of the gradual development and continuity of Serbian (Yugoslavian) administration since the creation of the kingdom of Serbia through all further states, the last two experiences, the SFR Yugoslavia and Milošević's regime being the most relevant for understanding the situation in Serbian administration at the end of 2000.

The Serbian administrative tradition was inspired by the continental/German model of bureaucracy and was following its developments until World War II and the establishment of the communist state. The almost 50-year long communistic regime strengthened its formalism and attachment to norms. The centralization and the hierarchy were combined with the rigidity and strongly pronounced legalism, but, unlike German tradition, the bureaucrats were not given any influence on the decision-making process. In the absence of channels for the

bottom-up communication, the incrementalist approach and the gradual improvement of the existing legislative framework was an impossible strategy to adopt. The problems were faced with the new legislations, contributing to the creation of a cumbersome and hyper-developed legislative system. Even the constitutions were subject to the continuous reforms and changes[223], whenever a political or economic crisis rose (Allcock, 2000, cited in Eriksen, 2005).

Beside the formalism, centralization and hierarchy, another significant characteristic of the Serbian administration until the end of the '80s was the professionalism of the civil employees ensured by the security of tenure, the high revenues and a career based on seniority and experience[224]. Politicization was present in these years as well, but the single-party system, the continuity of the communists' rule, and the combination of the party loyalty with the professionalization and merit-based recruitment ensured the high quality of the civil servants.

The period of Milošević's rule also left a strong print on the Serbian bureaucracy: the professionalism was substituted by political loyalty while partisanship and nepotism became the only decisive criteria for recruitment and career. Low remunerations and the loss of the social status bureaucracy enjoyed in the previous period almost emptied the administrative lines from the most competent and professional staff, making it a position attractive only for the protégés of Milošević's party and to those interested in job security and certainty of career advancement, regardless of the inadequacy of remuneration at that particular time. The administration was at the same time oversized, and short of competent cadres. Corruption, which grew to enormously high levels in Milošević's period, represented another characteristic of the Serbian administration that the transition was supposed to cope with[225].

These characteristics made the administrative reform in Serbia one of the most serious obstacles in the democratization process: the normativism and formalism that produces rigidity in functioning made the reform necessary to be undertaken as soon as possible, while the entrenchment and a tight net of legislations, norms and rules made the reform of civil service a complex task. Moreover, the extremely high level of politicization of the civil servants represented another source of concern. With the regime change, the top positions in bureaucracy were all changed and the new staff, supportive for the reforms, was appointed. However, the "voluntarism" and support for the government's reformist orientation these

[223] During the 55 years of communist rule, Yugoslavia saw four constitutions, in media one every 10 years (1946, 1953, 1963, 1974).

[224] See World Bank report on Serbia and Montenegro public administration development, Report No. 28553-YU, 2004.

[225] See the section on the fight against corruption.

people shared was combined with the lack of practical experience (in the interview with the Prime Minister Đinđjić made by Eriksen, Đinđić expressed this point by stressing that he and his colleagues were trained in opposing, not in exercising the political power). The lack of experience and of administrative background represented one of the causes of the low administrative capacity identified as one of the key obstacles for the transition in Serbia[226].

With the excuse of the need to "clean the administration" and to "reform" the new elite, the practice of partisan appointments in bureaucracy went on. The politicization of the senior official positions, causing the changes in the staff with every change of the minister, is seriously hampering the functioning of the ministries and the continuity in the work.

The politicization is not limited to the top senior managerial positions only, but it is a process that tackles all the single heads of office and heads of units and sub-units all over the country, both in the administration and in the entire public sector. Even though the managerial positions in the public sector are not officially political appointees, the political control over the managerial boards brings to the politicization of all these positions.

The politicization of the entire managerial structure further results in the politicization of the civil service as coming from the politicization of the recruitment and career procedures. The politicization at the same time brings to over-crowding the administration and to the lack of professional staff. Even though the "systematization" measure is introduced in order to "control" the employment in the civil service, the politicization and feudalization of the Serbian government limited the impact of this measure. The employment in the specific unit of the administration is possible only for those vacancies that are prescribed by the systematization of the positions in one specific unit. The systematization plan is designed by the director of the unit and controlled and approved by the minister. Through the political appointee of both these functions, the political parties gain the control of the entire process of opening new vacancies in the administration. Further on, the manager of the unit having the final word in the employment, the entire process of recruitment is under political control of the party holding the specific ministry. The oversized administration made it impossible to establish an adequate pay system capable to attract high quality staff, representing another serious obstacle to the administrative reform. The corruption, in both its shapes as state capture and administrative corruption, is favored by the setting in which the control and accountability are following only the party lines.

[226] See Begović, 2005.

The third obstacle to the reform derives from the lack of political consensus over the reforms and the lack of attention for the issue. As already stressed, the only issue keeping DOS together was its opposition to Milošević's regime. Once this goal was achieved, the conflicts over the reforms, their content, goal and timetable created a split between the two strongest partners: DSS and DS (that remained in DOS). Đinđić and his DS represented a pragmatic part of the coalition pursuing the economic reforms and giving it the precedents over the legalistic issues. When it comes to reforming the administration (but also to approaching all other state reforms), they advocated an approach based on discontinuity. One of the possible solutions was to annul all legislations previously brought and to undertake a process of re-building of the entire legislative and constitutional framework. However, seen the priority they gave to the economic reforms, this option never arrived onto the agenda. Koštunica's and DSS line advocated a policy of continuity, underlining that a democratic transition shall not be undertaken with the methods used by the previous regime: illegality and violation of the rule of law. The result was that the legal framework, unharmonized, hyper-regulated and full of controversies, was kept in place in order to be gradually changed. The stronger part of the coalition (DS and Đinđić) gave higher priority to other fields of reform (especially the economic one), tackling the administration reform only occasionally, without a clear strategy over the reform[227].

During the period of Đinđić-Živković's government, the steps undertaken in this field were sporadic and lacked a clear vision. The Agency for the Development of the Public Administration and the Institute for the Administration Reform with a task to pursue the reform of the administration were formed, but the lack of coordination and of a clear distribution of competencies resulted in the deadlock of the administrative reforms. The reform was left to those ministries where the ministers were unwilling to take unpopular measures and tried to cope with the reform as best as they could[228].

In 2002, political turbulence brought to the reorganization of the government and the Ministry for Public Administration and Local Government was created as a side payment to a small political party granting support to the unstable government. The small political weight of the minister and the difficulty of the task that in order to be undertaken needed the prime minister's involvement to coordinate the action, undermined the efforts. The new ministry

[227] Eriksen, 2005.

[228] In the interviews undertaken by Eriksen, the ministers declared that seen that the reform of administration is a task which benefits can be observed only a decade after, no minister was willing to be the one to fire more than 50 people from his ministry.

drafted a package of legislations, including the Bill on Public Administration, the Civil Service Act, the Code of Conduct for Civil Servants, the Bill on the Prevention of Conflict of Interests and increased efforts to draft the national strategy, but as the government got into a crisis, the Ministry decided not to initiate the procedure in the parliament that would most probably reject the legislation. None of these laws were ever discussed in the parliament.

7.1.2. The Reforms

The change of the ruling coalition that took place in 2004 brought to power Koštunica's DSS, well known for its legalistic approach according to which the reform of the state (and also the reform of the public administration and civil service) were the most urgent reforms to tackle. Such persuasion of the urgency of the public administration reform was fueled by the problems in the implementation of the economic and other already undertaken reforms due to the lack of administrative capacity. Moreover, Koštunica's far less conflictive approach to the continuity in the transition made the reform of the administration easier to face, as he was potentially more successful in achieving what Roeder (1993) considered the necessary condition for the reform: "To succeed, the reformers must find the way to use the rules of the status quo to subvert it, which involves the difficult task of 'inducing political actors empowered by an existing status quo to change it" (Roeder, 1993, p. 233)" (Snyder and Mahoney, 1999, p. 105). The presence in the government of a change agent devoted to the reform, the existence of the internal input for the reform and the reduction of the level of conflictuality over the reform due to the approach the change agent adopted, ensured the success of the administrative reform.

The newly elected government, convinced that the efforts of the previous cabinet were not acceptable, undertook the design of the administration reform from the very beginning. In 2004 only the Law on the Formation of Public Agencies was adopted. The legislation regulated a practice, already established by DOS, to create and use the agencies as quick, efficient, operative bodies in response to the lack of efficient bureaucracy. The agency model, deriving from the Anglo-Saxon administrative tradition, was a first effort of decentralizing the highly centralized hierarchical structure of the ministries. About 11 agencies were formed by Đinđić's government, where the governmental ones showed to be more functional than the private ones.

The reformist efforts were intensified and by the end of 2004 the National Strategy for the Public Administration Reform and the following Action Plan prescribing the deadlines for the

5-year long project of the reform were adopted. The strategy underlined five principles to be followed: decentralization, depoliticization, professionalization, rationalization and modernization of the civil service.

The efforts to reform the civil service were specially intensified during 2005, when the Law on Government, Law on Public Administration, Law on Civil Servants and Training Strategy for Civil Servants were adopted. The Law on Civil Servants constituted two new bodies, the Human Resources Management Center (HRMC) and the High Civil Servants Council (HCSC), with a task to improve the employees management, ensure merit-based recruitment and career curriculum, create a national cadre database and undertake the training of the staff. The structure of the civil service was designed on a 13-level scale and the pay system was linked with the rank.

The Law on Civil Servants provided for a clear distinction between civil servants and political employees, enlarging the group of career civil servants to the detriment of political appointees in management positions. In the phases of the implementation of the law, all management positions (about 360) that were changed from political appointee to civil servants positions were declared vacant. The law prescribed the procedure for the appointment on these positions based on the principle of professionalism and merit-based selection. The High Civil Servants Council (the body appointed by the government) is supposed to test the candidates and produces a shortlist of a maximum of three top candidates among which one is selected by the minister to the nomination by the government. The lack of independence of the bodies included in the process of the appointment is a potential source of concern for the prevailing of the professional criteria in the procedure, even though the president of the HCSC reported only a mild political pressure over the procedure.

The recruitment procedure for the lower ranks of the civil servants is decentralized, leaving it to the head of the institution (agency or unit) to decide about the modalities of the competition. While the law prescribed mechanisms that are quite in line with the European standards, including the examination, open competition and merit-based recruitment, the lack of mechanisms ensuring the government's accountability creates a situation in which the partisan-based recruitment is still possible. The system based on "systematization" was maintained, allowing party-based decisions to open new working places, while the previously mentioned "feudalization" of the ministries allowed full party control over the vacancies in a specific sector[229]. Once the new working place was open, the internal or public concurs is

[229] See the section on the political system. See also Pešić, 2006.

open. Even though the law in principle underlines that the candidates shall be judged on the basis of their achievements, education, capacities or examination, it failed to ensure that such criteria are applied by an independent body. The decision on the procedure of selection among candidates, the election of the members of the commission that will select the adequate candidates, as well as the final choice of the candidate from the list given by the commission, all these competencies are given to the head of the administrative body in which the vacancy is open. The presence of a member of the Human Resource Management Service as a monitoring member in the commission for examination is a weak guarantee of political neutrality in the procedure, as the government controls the HRMS.

The politicization of the staff and prevailing of the partisan over the professional criteria persist, with the ministerial powers being limited only by the state budget prescribed for that particular ministry.

The professionalism of the newly recruited staff is ensured through the obligation of each candidate to have served his probation period and to have passed the state examination. The candidates for the probation period are selected according to the same procedure described above. The state examination (a practice existing since the period of communism), covers the legal issues and basically tests the university knowledge of the candidates. In the previous practice the only training the servants were offered during the probation period was the working experience. Recently the Human Resources Management Service developed a training program for the cadre on the probation period[230].

The career of civil servants, as regulated in the legislation, is also made dependent on the evaluation of his work. Similarly to what we will see in the case of the judiciary, the evaluation is mainly based on the efficiency measures (articles 82-88, Zakon o Državnim Službenicima). According to the strategy of the reform of administration, the performance evaluation in 2011 should start to influence the revenue through the merit-based salary incentives.

The pay system was also reviewed, aiming to ensure more adequate revenues for the civil servants. One of the biggest difficulties in ensuring the highly professional staff in the administration derives from the inadequate salary system, where the salaries in the private sector are much higher than those in the state administration. With the Law on the Salaries adopted in July 2006, the salary system provided for a compression ratio of 1:9. Put in practice in January 2007, the law caused the malcontent of the civil servants due to its disproportional effect on different units of administration. The malcontent escalated in the protest of the civil

[230] See SIGMA, "Serbia, Public Service and the administrative framework, assessment June 2007".

servants in December 2007 that brought to an increase in the salaries and promise of the minister that the revision of the pay system should be undertaken and that the 1:9 difference should be reduced to a 1:6 compression ratio. The lack of financial resources is a main obstacle to the establishment of an adequate pay system that would make the civil service more attractive[231].

The reform of the civil service is still in a phase of implementation. The legislative framework is mainly in line with the European standards, but the implementation still shows the tendency to maintaining the party influence. The persistence of the practice according to which the ruling parties "divide the spheres of influence" in administration and public enterprises shows that the new legislative framework did not safeguard the public sector from the party influence.[232]

7.1.3. EU and the Civil Service Reform

As Tables 7 and 8 show, the international actors were supportive for the administration reform, both by making it become an issue of conditionality, and by providing material and technical resources and assistance. Beside the European Union, the other international actors that acted as rule promoters were the World Bank, the Council of Europe, the United Nations Development Program, the OECD with its SIGMA project and the Norwegian embassy.

The depoliticization and establishment of a professional and efficient bureaucracy were among the most often underlined requirements. Beside conditioning the EU integrations with the administration reform, financial assistance was also made available. As the lack of administrative capacities in Serbia was, among other, also caused by the lack of material resources, the financial assistance made available was of crucial importance. The training of civil servants financed and organized in cooperation with the European Agency for Reconstruction was one of the most important programs in the field. The technical assistance in law drafting was also made available, exercising a strong influence in the development of the national strategy for the administrative reform. Obviously, such document, once adopted, gained a very positive evaluation as far as its compliance with the international standards is concerned.

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[231] See http://www.b92.net/info/vesti/index.php?dd=10&mm=12&yyyy=2007&nav_category=9, http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=11&dd=29&nav_id=274353.

[232] For concrete examples of the division of the public enterprises as part of the coalitional agreement after the 2007 parliamentary elections, see http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=10&dd=10&nav_category=11&nav_id=267157, http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=10&dd=11&nav_category=11&nav_id=267321.

Even though the reports praised the achievements (mainly in setting the legislative framework), the public administration reform remained among the key priorities of the EU partnership. Particularly difficult was the civil service pay system reforms and related human resource development measures, the first mainly due to the lack of financial resources in the budget, the second mainly due to the fact that in the process of, as O'Dwyer called it, "runaway state building", the political parties are not willing to abandon the source of the economic benefits for the party leaders and the main employee for what is known as "partisan labor market".

7.1.4. Reform of the Public Administration: Assessments

As we saw, in the field of the reform of the civil service we can distinguish two periods. The first period, the Đinđić-Živković government, was mainly characterized by neglect for this area and sporadic, ad-hoc solutions for the most urgent problems. Responding to the necessity deriving from the regime change to adapt the old bureaucracy to the needs of the transition, the government changed all senior officials and all managerial staff, continuing the trend of the civil service's politicization. The neglect of the prime minister's party for this area of policy, in a system where centralization and hierarchy are coupled with lack of communication between the ministries and with a politically weak minister of administration, meant that no forces necessary to pursue such complicated and painful reforms were to be found. Due to such situation, the lack of domestic change agents was the main cause that delayed the reform.

In the second period, marked by the change of government, the actors formally committed to the public administration reform came into the office. The collocation at the center of Koštunica's minority government helped to overcome the fears within bureaucracy, and to gain, at the time, an already growing consensus on the need and urgency of the public administration reform. Moreover, the international pressure was growing stronger. What followed were increased efforts to undertake the civil service reform, during which the rule adoption was intensified, while the rule implementation saw some difficulties. As we saw, the transparent recruitment, professionalism and accountability still are victims to the interests of clientele-oriented political parties, yet in a far lower measure than they used to be. The settled legislative framework does allow the building in time of the professional civil service, making the implementation of the reforms a crucial phase in the years to come.

7.2. Macedonia: Ethnicization of the Politicized Administration

7.2.1. The First (wrong) Steps

The bureaucracy that Macedonia inherited after its independence was hierarchically organized, strongly centralized, rigid and inefficient (Risteska, 2006). The legalistic approach typical for the Prussian type of bureaucracy was strengthened by the centralization during the communism, bringing to the creation of bureaucrats with a tendency to interpret all legislation in a very restrictive grammatical way[233]. After the independence, the process of the "runaway state building"[234] and the patronage politics of the ruling elite brought to the politicization and over-sizing of the administration and public sector, while at the same the economic crisis and financial austerity made such a large bureaucracy difficult to maintain. The result was the lowering of the revenues, the pay-system becoming unable to attract qualified staff[235]. At the same time, the too-low remunerations to protect the clerks from corruption further hampered the staff's integrity and professionalism.

As the financial crisis forced the government to apply for the international assistance, World Bank credits and IMF grants, the country got exposed to external pressures for the unpopular reforms of cutting the public spending and downsizing the administration[236]. Trying to reduce the impact of the difficult reforms the country was facing, the Albanian political elite started arguing that the Albanian minority is underrepresented in the administration[237], an issue that at the same time would be used to gain new job positions to fulfill by the ethnic criteria, but, even more importantly, would ensure that in the possible

[233] See SIGMA report on Balkans public administration reform, The Former Yugoslav Republic of Macedonia, 2004, see Risteska, 2006.

[234] O'Dwayer, 2004.

[235] The ratio between the lowest and highest salaries in 2004 was only about 1:2.6, while the only supplement offered is 0.5% seniority increase every year, not offering any performance incentives. Source, SIGMA report, 2004.

[236] See the IMF Staff Country Report 00/72, Former Yugoslav Republic of Macedonia, recent developments. See also the documents of the World Bank linked to the administrative reform in Macedonia.

[237] While the numbers do support such finding (the percentage of Albanians in the public administration – 7% – was lower than the share in the population – 22%), the question is to what extent such distribution in the Nineties was a product, as the Albanian elite was arguing, of discrimination rather than a consequence of the very large demographic and cultural discrepancies between Macedonians and Albanians. Thus, the prevailing traditionalistic cultural pattern of the Albanian minority in Macedonia meant the high concentration of the minority in the rural areas, with lower education, and with the traditional position of women excluded from the labour market. In this concern we find significant the commission staff working papers issued by the EU's commission on the developments in the Southern-Eastern Europe, where in the 1997, '98 and '99 report we find the statement that the representation of the ethnic minorities in the administration is improving and is satisfactory except for the security sector.

structural reforms the supporters employed in the administration would be spared of the costs.

With the change of government in 1998, the administrative reform, delayed in the first seven years, arrived on the agenda. The external pressures, the financial necessity and the new elite determined to "reform this inefficient residue of the communistic area" successfully pushed the reform onto the table. The reform was initiated already in 1998, when a working group in the government was formed with the intention to draw the national strategy for the reform of civil service, adopted in 1999. The strategy underlined the rule of law, transparency, competence, stability, responsibility, predictability, equal treatment, efficiency and ethnicity as the principles to be pursued by the reform. Consequently (and somewhere in line with the IMF requirements, seen that in the year 2000 the country was applying for a new financial arrangement with the Fund) the Law on the Civil Servants, Law on Government and Law on Organization and Operation of State Administrative Bodies were adopted in 2000. The Law on Government shrunk the number of the ministries from 21 to 14 with the intention to re-size the administration by, as the government in the letter of intent to the IMF underlined, "eliminating the surplus positions that emerged". The same year, a Law on Civil Servants was adopted with the aim to regulate the status, rights, duties, responsibilities and salary system of the civil servants. According to the law, the selection procedure was to be based on the merit principle, vacancies were to be published and, after a vocational examination, the applicants were to be selected from the list prepared by the civil servants agency. The civil servants were classified in three categories: i) executive civil servants, ii) expert civil servants (for both positions the university degree is required, a provision with strong distributional effects seen the lack of university education in minority language, and particularly the low instruction level of the Albanian minority), iii) the expert-administrative civil servants, with the college or high school degree required. The law further differentiated between 13 different positions in the civil service system, where the criteria for the advancements as well as the pay system were to be regulated on merit basis, the performance measurement being the main criteria.

However, none of these measures was more than a fake compliance covering the further politicization of the administration. Behind the government's devotion to the reform was the desire to put the administration under the control by appointing the staff by partisan criteria. The inter-ethnic tensions were used as masks behind which to cover the patronage and corruptive politics the government was undertaking.

> "From the very beginning, the coalition promoted the principle of the division of the spheres of influence on the ethnic lines between the coalition partners. The cadre-policy followed the political and ethnic criteria that corresponded to the political and ethnic membership of the official in charge in the particular policy area, resulting in the further degradation of professionalism." (Nikolovska and Siljanovska-Davkova, 2001, p. 40, translated by I.M.[238]).

Thanks to the successful use of the nationalistic rhetorics and due to the homogeneous ethnic composition of the political parties, the distribution of the resources on the partisan criteria took the shape of the allocation on the ethnic key, deepening the already severe inter-ethnic divisions[239].

The adopted legislative framework kept the numerous loopholes. The Law on Civil Servants excluded a series of state officials from the category that is to be regulated under this law, the civil service positions being defined as only those where the task is to perform professional, normative-legal, executive, or administrative-supervisory activities and to decide on administrative matters. Very large public sectors (of particular importance are health and education system, where the disproportional employment was strongly criticized), the security sector (the ministry of the internal is the largest ministry, the number of police officers significantly increased in the period 1998-2002), the customs and public revenue offices were all omitted from compliance with the law and were to be separately regulated. Moreover, the newly formed agencies and state bodies were also omitted, even though under the definition of civil service they were supposed to be regulated by the law[240]. The law established the Civil Servants' Agency with a role to manage the recruitment and career of the civil servants. The agency was thought as an independent body, but this independence, according to the domestic authors, is hampered by the appointment procedure of the head of the agency[241]. According to the first version of the law, the head of the agency was to be appointed by and responsible to the government, a situation allowing great party influence over the agency. In May 2001 the law was amended, excluding the employees of the Central Bank and Custom administration from complying with the law, and changing the procedure for the appointment of the head of the agency that now passed to be appointed by the assembly on the governmental proposal, a situation that in the asset of the executive control over the assembly surely is not a mechanism

[238] A similar argument on whether the ethnic conflict was used to mask the channels of the corruption in government was sustained by Hislope, 2001, 2003.

[239] We find an illustration of this mechanism in the case of the "restructuring" of the airport service that took place immediately after the formation of the government VMRO – DPA. The new manager, an ethnic Albanian, was assigned by DPA and as soon as he came in the office, 70 Macedonians were expelled from the job and 128 ethnic Albanians (again supporters of the DPA) were employed.

[240] See Davitkovski, 2007.

[241] See Davitkovski, 2007.

able to guarantee its independence. Thus, while the first director of the agency was discharged after the 2002 elections due to embezzlement, abuse of power and irregularities in the appointments of civil servants[242], the second director resigned in 2004, explaining his resignation with the political pressures and subordination of the agency to the political leaders as the main reason.

Finally, the salary system prescribed by the law that would result in merit-based supplements, and would significantly improve the position of the administrative clerks by making the position desirable, this way granting the better quality of the service, was not implemented.

Cuts in the administrative staff were undertaken, but instead of investing the created surplus in an implementation of the salary system that would foster professionalism, the government decided to use the emptied positions to introduce their "own people" in the administration. Parallel with the downsizing, the partisan recruitment was taking place. In the period 1998-2002, marked by the difficult reforms of the civil service and administration downsizing, the number of Macedonian civil servants increased from 92.000 to 128.000, all employed in the party lines[243].

7.2.2. Implementing the OFA

One of the most important consequences of OFA concerned the Macedonian administration, as the principle of the equal representation was one of the most crucial elements of the peace agreement. The equal representation principle meant in practice that the ethnic composition of the country should be reflected in all state institutions on all levels, public administration and enterprises in particular[244]. The introduction of the equal representation as a key for peace and stability in a situation where the fiscal austerity pushes for cuts in the public spending and for the downsizing of the administration, can not only seriously hamper the professionalization of the civil service, but may even result in the re-allocation of the resources along ethnic lines, further increasing the ethnic tensions.

[242] The Civil Servant Agency in that period appeared to be a façade for the illicit and irregular employments on political and kinship basis. In the end of 2002-beginning of 2003 the director of the agency Dvojakov was accused of abuse of the function and irregularities in the process of the employment, which resulted in numerous recruitments that did not fulfill the legal criteria
(see Utrinski, 2002-12-18, http://star.utrinski.com.mk/?pBroj=1048&stID=3882&pR=3, Utrinski 2002-11-28, http://star.utrinski.com.mk/?pBroj=1031&stID=4498&pR=3, Utrinski, 2002-11-28, http://star.utrinski.com.mk/?pBroj=1031&stID=4499&pR=3, Utrinski, 2002-11-27, http://star.utrinski.com.mk/?pBroj=1030&stID=4393&pR=2).

[243] See Gaber – Damjanovska and Jovevska, 2003, 2006.

[244] See OFA, article 1.3, 4.1, 4.2, 4.3. See relevant appendix to OFA.

Following the OFA, all relevant legislation in the matter was amended in order to incorporate the principle of the equal representation. The Code of Ethics of Civil Servants was also adopted in 2001. As for the implementation of the legislation and the reform, we already underlined how the downsizing was combined with new recruitment in the party lines.

The change of the government in 2002 brought to a new reshuffle in the administration. The newly appointed government accused the previous elite of partisan recruitment and announced the intention to downsize the administration, first of all by re-examining all the recent appointments, with the suspect that they were mainly irregular and partisan-guided[245]. This brought to a revision of the working contracts and a series of annulments. The politicization however continued, as the "downsizing" and "re-examination of contracts" was again guided by partisan interests and concerns. As Hristova (2005) underlined, the line of the discrimination and social marginalization in Macedonia follows the party, rather than ethnic lines.

The particular contradiction rose from the combination of the principle of equal representation and the need to downsize the civil service, both necessary and urgent steps [246]. The result was an absurd situation in which, in 2003, the government's decision to dismiss 2000 people was reported side by side with the news of the opening of 600 posts in the administration for the members of national minorities.

In order to allow the equal representation in the situation where the ethnic minorities were unable to satisfy the criteria required by the Law on the Civil Servants (mainly due to the demographic composition of the ethnic Albanian community combined with the education policy pursued in the '90s[247]), the law was further amended in 2004, lowering the criteria for the recruitment[248]. In such manner the principle of the equal representation turned to the

[245] Decision of the government of Macedonia, published in Utrinski, 2002-12-18, http://star.utrinski.com.mk/?pBroj=1048&stID=3882&pR=3.

[246] The equal representation was strongly promoted by the Albanian minority threatening the use of violence in order to ensure the employment of their co-nationals. The financial situation was pressing the government to limit the spending. Finally, the external pressures and conditionality pressed the government to pursue both goals simultaneously.

[247] The share of the Albanian minority in the whole population is 27%, while in 2004 their share in the public administration was about 13%. This underrepresentation coincides with the lower education rate of the minority population. Thus, while in the primary and secondary education there are about 27% Albanian pupils, only 11.2% high school pupils are Albanian. The situation is even more disastrous at the university where, among other, also due to the lack of university education in Albanian language, the percentage of Albanian students is only 2.8% (Nikolovska and Siljanovska – Davkova, 2001). In order to achieve the equal representation in the public administration it therefore appears crucial to face the problem of the education in minority language.

[248] Thus the Article 2 of the Law on the Amendments of the Law on Civil Servants (October 2004) allows for the national minority members who passed the training to be employed without passing the examinations required for the recruitment of Macedonian civil servants.

ethnic key for the re-allocation of resources, which instead of bringing to the reconciliation of the ethnically divided groups and the building of a professional administration, resulted in increasing the ethnic tensions and in the further ethnicization of politics.

Besides, or better said, in a perfect match to the ethnic key, the partisan affiliation persisted as a criteria for re-structuring the public administration. The reshuffling of all managerial positions down to the smaller units takes place in order to reflect the electoral result, turning the "merit-based" recruitment envisaged by the legislation into nothing more than dead letter on paper. The Albanian party in the governmental coalition was using the state administration and the principle of equal representation to ensure the employment of its own supporters, while the Macedonian ruling party supporters were relatively protected from uncertainty during the government's measures for downsizing the administration[249]. The low salaries (provisions of the Law on Civil Servants aiming to introduce the merit-based pay system were continuously postponed due to the lack of financial resources in the budget), on the other hand, made the public service unattractive, hampered the professionalism and independence of the civil servants that in the hierarchical, politicized system turn from "civil" to "party servants".

7.2.3. The New Wave of Reforms

The politicization and inefficiency of the public administration were a target of severe external criticisms, which produced growing pressures for the PA reform, particularly in the period the country was preparing to apply for the status of the EU candidate country. In 2004-2005 steps were taken to improve the legislative framework by amending the code of ethics for civil servants in 2004 and strengthening the Civil Servants agency in 2004 and 2005, improving the existing provision on recruitment and mobility of the civil servants. The agency's capacities were fostered to coordinate the training programs, and in October 2005 the agency adopted a National System for the Coordination of Training of Civil Servants[250]. Particularly in 2005, as a part of the reformist steps in the aftermath of the application for the

[249] On how DUI conditioned the support to the structural reforms with the employment of the 15 DUI supporters in the administration, see Gaber-Damjanovska and Jovevska, 2004.

[250] However, as it can be seen from Table 2, the budget of the agency in this period was not following this "strengthening" logic, the amount destined to the agency remaining almost unchanged in absolute terms, while the share in state budget shrunk. In 2005 part of the resources (132.000) from the agency's budget were allocated to the training as a part of the government's priority. The structure of the resources for the administration reform shows that the main issues covered by the reform concerned the social programs for downsizing the administration and security sector and growing attention on the equal representation (in 2008 the equal representation became the highest spending item in the reform), while the training and improving of the financial management was given only sporadic attention).

EU, the implementation of the existing legislative framework significantly improved. The first performance appraisal (prescribed by the legislation but never implemented) was completed, an action plan to set up a functional human resources management system was adopted, a new system of salaries for civil servants was introduced, and the rules for defining disciplinary offenses and conducting disciplinary procedures established. The Law on Access to Public Information was enacted in January and entered in force in September, and in order to increase the transparency in public administration a commission was set up to monitor its implementation. The trend of pursuing the reform of the civil service continued in 2006 and 2007, mainly by introducing training, strengthening the cooperation with the Ombudsman and increasing the transparency in functioning. Yet, many of the efforts remained only on paper: while the performance-based assessments were issued, many of the reports were not submitted to the agency, while the introduction of career salary supplements stipulated in the civil servants law was further postponed[251].

The politicization and the partisan-guided recruitment continued. The legislative framework, even though considered in line with the EU standards, has to be further improved in order to avoid dispersion and to improve coherence and consistency. The Law on Civil Servants remains narrow in its goal, many categories being excluded from the compliance with the law. This further limits the competencies of the Civil Servants Agency, excluding from its goals some parts of the administration that exercise the executive power and the entire non-political public sector (see for example SIGMA report on Macedonia, 2007). Of particular relevance are those periods during the electoral campaign as well as after the formation of the new government, both characterized with important shifts in the administration. The agency for the statistics brings the number of 3.298 new employments that took place in the electoral campaign in 2006 (ten times more than in 2005). At the same time, the change of government brought to large-scale dismissals and changes in the managerial bodies, from the high state and administrative officials, to the high, medium and even lower rank clerks. According to the media the "cadre cleansing" that took place counted few thousand of clerks and employees in the public administration and public sector (from the University deans, faculty presidents, to the managers of the smaller units in the health care institutions and police department officials). Such practice was also the characteristic of some units of the local self government

[251] On the recruitment of the civil servants, analysis of the existing models, description of Macedonian legislation and the implementation as a key condition for increasing the quality of Macedonian civil service, see Vitanski, 2008.

where, due to the decentralization process that saw a great number of competencies passing to the local level, the local governments seized the opportunity to use the administration for ensuring employment for the followers. This resulted in increasing the stake in the 2005 municipal elections, bringing to the electoral campaign where the promises on the ethnically based employments in the local level administration were used to attract the votes (see the section on decentralization and on the elections).

The final result is a deeply politicized administration where the administrative capacities are seriously hampered as professionalism is sacrificed to ethnical and party interests. The ruling elite has no political will to cope with the issue: the professional, technical approach to the reform and de-politicization of the administration would cause the loss of a significant resource of power, while at the same time, in a situation of high unemployment rate and large scale poverty, the necessary downsizing and unpopular measures would cause the loss of electoral support.

The costs of the administrative reform that, due to the fiscal austerity, took the shape of the re-allocation of the resources along ethnic lines, creates more pressure to the ethnic majority parties and is contributing to increase the ethnic tensions, an issue that is further abused by the political elite in the mobilization of the electoral support, hampering the process of democratization and covering the rule of the narrow circles of the party oligarchies.

7.2.4. The Role of the International Actors

As we already saw, the international community was strongly involved in the promotion of the civil service reform. The first changes in the legislative framework in 1999 were part of the sectoral policies promoted by the IMF[252] and of the NPM reform strongly recommended by the World Bank[253]. Finally, the EU in its regional approach through the PHARE program offered its support for the reform of the civil service already in the '90s, particularly underlining the necessity for the de-politicization and the merit-based system of recruitment, professionalism, increase of the institutional capacity. In the EU reports prior to 2001, the lack of a public administration reform is seen as a cause of problems with the law enforcement in the economic matters, while the high personnel cost in the budgetary sector

[252] Macedonia signed the first IMF arrangement in 1995, and further funding was required in 2000.

[253] Since 1994 the World Bank was conditioning the financial support in the reform of the pensions and health care system with restraining of the state spending.

and relatively generous pensions and social benefits were identified as structural problems hampering the financial sustainability[254].

In the periods after the 2001 conflict, the EU pressures were concentrated on the de-politicization and creation of an efficient, professional civil service through the implementation of the existing legislative framework. The EU political requirements in the field of the implementation of the OFA insisted on the respect for the principle of equitable representation through the adoption and implementation of the strategic plan (EU partnership 2004). As part of the EU economic issues, the EU required Macedonia to downsize the number of civil servants in line with the IMF recommendations.

The civil service reform became one of the key issues of EU democracy promotion in Macedonia. Financial and technical assistance, from the EU and the member states, as well as from the World Bank, were made available in order to support the painful reforms (see the tables in the appendix).

7.2.5. The Civil Service Reform: Assessment

The reform of the public administration in Macedonia appears to be a kind of Pandora's box, where the particularly negative setting of the factors makes the reform extremely difficult to undertake. The fiscal austerity and lack of resources, the ethnicization of the issue, the hierarchical structure of the administration, the narrow political interest in the politicization of the administration were, and still are, hampering the reform.

The changes introduced were mainly externally driven, increasing the importance of the international actors in Macedonian democratization. Due to the particularly negative developments on the domestic level that turned the civil service into a key for the inter ethnic peace, the IA included the principle of the equal representation into the standard package of the administrative reform, thus indirectly accepting the prevalence of the ethnic principle over the civic principle in the recruitment of the civil servants. In line with Tupančeski (2005) we can conclude that it is impossible to satisfy the two principles at the same time, and in Macedonia's case the necessity to strictly comply with the principle of the equal representation entered in conflict with the merit-based principle officially envisaged by the legislator.

As far as the domestic actors are concerned, we can observe how the change agents and veto players were interchanging in the different dimensions of the reform. The initiative for the settling the legislative framework was coming from the newly elected anti-communist elite

[254] EU report on Macedonia, 1998.

in 1998, but here we account for the "fake" change agents bringing to the fake compliance and the "half undertaken" reforms. Similarly to what happened in the decentralization process, we can recognize in the ruling political parties (independently on their identity) the veto players obstructing the process of de-politicization of the civil service, which in some cases even resulted in the open breaking of the legislation. No change agents truly devoted to the administrative reform can be found in the country, except, in some moments, the civil servants agency that in the vertical conflict for power between the state agencies are trying to increase their own powers respect to the government, an effort that, however, is very limited in its goal. As far as the implementation of the OFA principle of the equal representation is concerned, due to its re-distributive effects it easily found supporters among the minority political parties mainly playing a role of change agents fostering the ethnically based recruitment. Unfortunately, due to its importance, the issue, by becoming the core stone of the peace agreement, degenerated to a principle hampering the professionalization of the service as ethnicity prevailed over the merit-based civic criteria for employment.

7.3. A Comparative Assessment

As we could see, both the studied countries undertook the reform of their civil service, aiming to its de-politicization, professionalism and increased efficiency. The results, however, are not fully satisfactory, both countries being strongly inclined towards the politicization of the civil service (a tendency registered in almost all central-eastern European countries, see Meyer-Sahling, 2004). Such tendency is particularly present in Macedonia, where the Law on the Civil Service is limited in its goal and occasionally (as it was the case with the appointment of the senior ranks of civil servants) is not even respected. On the other hand, Serbia, even though it still shows the characteristics of a situation where the politicization and the rule implementation are not fully accomplished, is praised by the international actors for its generally high level of administrative capacity.

The differences in the "achievement" in the two countries are a product of the very different settings of factors concerning both the international and the national level. As far as the international actors are concerned, the EU showed to be much more active and decisive in promoting the reform of the civil service in Macedonia than in Serbia. In a very credible manner, the EU fostered the reform in Macedonia, combining the general conditionality of

the membership with the more determinative, immediate awards, finally conditioning the access to the funds with the rule adoption. The importance the EU attached to the reform of the civil service mainly derived from the importance the issue had for the fragile inter-ethnic peace in Macedonia. The EU's approach to the Macedonian civil service reform, the financial assistance and the conditionality, all was concentrated on the principle of equal representation, pushing the professionalism and merit-based recruitment in the second plan. The security concern prevailed in the EU approach towards the Macedonian civil service reform, unlike Serbia where the public administration did not represent an issue that could trigger the rise of security concerns. This democratization oriented rule promotion in Serbia's case explains the lower financial support, the more technical (rather than political) approach of the EU to the Serbian administrative reform.

Table 1: "The most salient factors and the outcome of the Civil Service reform in Serbia and Macedonia".

	Serbia		Macedonia	
	2000-2003	2004-	Issues concerning equal representation.	Issues concerning depoliticization.
IA's interest in the field:	Democratization.	Democratization.	Security.	Democratization.
Conditionality:	No.	Weak (no important reward offered).	Strong.	Weak.
Domestic Change Agents:	Absent.	Present.	Present.	Absent.
Outcome:	No reform.	Rule adoption, partial implementation.	Rule adoption. Rule implementation.	Rule adoption. Lack of implementation.

On the domestic level we also find significant differences between the two countries. The importance the civil service reform assumed in the inter-ethnic relationships in Macedonia forced the actors to adopt the approach that threatened to hamper the professionalism and the quality of the newly appointed civil servants. The reform is only partially undertaken: the part concerning the equal representation is almost fully implemented, mainly thanks to the importance of the issue and the strong presence of the Albanian minority. As far as the de-politicization is concerned, Macedonia here scores only a fake compliance, both the adopted solutions and the implementation phase being very critical. In Serbia's case, we notice how the low conflict over the issue, combined with the presence of the ruling elite interested to push the reform forwards since 2004, brought to a relatively smooth process of rule adoption and

more or less satisfactory rule implementation. Finally, since 2004, in Serbia we have a rather stable political asset, which, unlike the mechanisms of accountability, appears to be a particularly favourable asset for undertaking the civil service reform in cases of strongly politicized administration[255] (see Table 1).

Before concluding, we shall make a few observations concerning the political stability/fluidity and the democratization process. While, as we were arguing in the previous chapters, too high a political stability negatively affects the ruling elite's inclination to establish mechanisms of the accountability, it appears to produce a positive effect on the de-politicization of the civil servant. When analysing the reforms of the civil service in the Central-Eastern Europe, Meyer-Sahling (2004) linked the results of the first multi-party elections and kind of the democratic transition to the de-politicization of the civil servants. According to his findings, neither the controlled transition (with the continuity of the ruling elite) nor the regime collapse (and the rise of a completely new elite from the line of the opposition) are favourable settings for the de-politicization of the civil service. In the first case there is an incentive for the maintenance of the status quo (see Macedonia 1990-1998, or Serbia under Milošević), while in the second case the change of the senior staff with no reform are the exit (see Serbia 2001-2003). Only in the negotiated transition (**re**forma pactada) that brings the democratic forces to the power, or the subsequent changes of government that see the arrival to power of a new government whose political agenda does not differ too much from the previous one (partially like Serbia's case since 2004) creates incentives for both the civil servants and for the government to undertake the de-politicising reforms. The relative stability of the Serbian political scene since 2004, the arrival of the continuity-oriented, centralistic coalition to power, the peripheral turnover that, at the same time, brought to the change (at least of a part of) the government, created a dynamic between the politicians-bureaucrats in which, according to the model of Mayer-Sheling, the de-politicization of the civil service is more probable. The persistence of the politicization of the Serbian civil service has its roots in the lack of mechanisms of the government's accountability, in the state capture and feudalization of the Serbian government that withdrew most of the ministries and executive as well as the welfare sector agencies from the structural dynamics of the system, making each single ministry and part of the administration a single story to tell.

[255] See Meyer-Sheling, 2004.

APPENDIX

Table 2: "Macedonian Agency for public servants budget".

Year	Agency for public servants budget	State budget	Share
2002	33.274	71700273	0.046%
2003	35.068	67490170	0.052%
2004	32.444	66666000	0.049%
2005	26.660	66538469	0.040%
2006	28.492	81.749.000	0.033%
2007	28.674	79.522.497	0.036%
2008	32.660	89.397.520	0.036%

Source of data: Law on State Budget 2002. 2003, 2004, 2005, 2006, 2007, 2008, Službeni Vesnik na Republika Makedonija.

Table 3: "The budget for the public administration reform as a governmental program, Macedonia".

Year	Administration reform governmental program (total)	Public service reform	Training for the civil servants	Financial management and public procurement management	Ministry of defense reform	Equal representation
2005	761.402	499.824	132	5.092	156.607	99.747
2006	643.154	395.183	-	4.642	197.571	45.758
2007	705.585	305.187	-	-	267.595	107.546
2008	582.006	176.544	-	-	205.462	200.000

Source of data: Law on State Budget 2002. 2003, 2004, 2005, 2006, 2007, 2008, Službeni Vesnik na Republika Makedonija.

Table 4: "The budget of the Agency for development of public administration, Serbia (since 2005 part of the ministry)".

	Institution	Revenues from central budget	Share in the central budget
2002	Agency for development of public administration.	4.877.037	0,002244%
2003	Agency for development of public administration.	8.021.000	0,002517%
2004	Agency for development of public administration.	2.588.000	0,000715%

Source of data: Law on State Budget 2002. 2003, 2004, Službeni List Republike Srbije.

Table 5: "The budget of the Human Resource Management Center, Serbia".

	Institution	Revenues from central budget	Share in the central budget
2006	Human Resource Management Center.	46.651.000	0,008507%
2007	Human Resource Management Center.	87.583.000	0,013548%
2008	Human Resource Management Center.	103.199.000	0,016866%

Source of data: Law on State Budget, 2006, 2007, 2008, Službeni List Republike Srbije.

Table 6: "EU financial assistance for the civil service reform in Macedonia"[256].

Year	Sum	Programs		Conditions
2002	€2.06 mil	Equitable representation of minorities in the civil service-Category III.		Implementation of OFA.
2004	€ 1.83 mil	Training of minority groups for civil servants (category II - translators and administrators.		
2005	€2 mil	Assistance to the sector for the Implementation of the Ohrid Framework Agreement and Training of minority civil servants (Category I).	The key conditionality for the project is the Government's commitment of resources to the implementation of the Ohrid Framework Agreement. It is also crucial that the Government secures adequate budget resources for this purpose and personnel allocated.	
Totale 2000-2006	5.86 mil euro			

Source: European Agency for reconstruction report 2006.

Table 7: "EU assistance for the civil service reform in Serbia".

Year	Sum	Programs Conditions	
2002	€1.5 mil	Support for public administration reform.	Condition from MIP: Progress on drafting, adoption and implementation of laws concerning the reform of the public administration, the functioning of the administration in key areas such as public procurement, budgetary process and financial control and progress on decentralization and the role of local government. Full cooperation with the work of the Consultative Task Force and the future European Integration Office on relevant reforms. Transparent civil service recruiting mechanisms introduced and enforced.
2003	€2mil	Strengthening the Ministry of State Administration and Local Self-government.	
2004	€21 mil	Further strengthening of overall administrative and financial management. Reforms (no data available about the amount for the civil service reform which represented one of seven issues to be covered by these resources).	
2005	€1.4mil	Technical assistance for preparation and implementation of administrative Reform.	Conditioned: The success of the project largely depends on the beneficiaries' commitment i.e. by timely provision of specialist staff, adequate office space and ensuring inter-ministerial cooperation during its implementation. These conditions will be detailed in specific Memoranda of Understanding prior to project launch.
Total 2000-2006		€4.9-25.9 mil	

Source: European Agency for reconstruction report 2006.

[256] On the share for decentralization and assembly, see the other sections.

Table 8: "The EU priorities and civil service reform in Macedonia".

2002 SAA	Provide the Civil Servants Agency with the means to implement civil service reform in a perspective of integration into the EU structures and promote transparency in the public administration and in all state bodies. Downsizing of the Public Administration as agreed with the IMF. Modernization of the Public Administration with a view to upgrading expertise and efficiency, notably in the context of the implementation of the SAA with the EU.
2003 SAA	Continue legislative and administrative reforms needed to facilitate the implementation of the SAA obligations when it has entered into force, in parallel with the implementation of the Ohrid Framework Agreement, and having in mind the need for equitable representation of different communities. A need for new employees has to be primarily met through reorganization and redeployment from other administrative bodies in line with conditionality imposed by the IFIs for decreasing the total number of civil servants. The reform of public administration should be boosted, including its downsizing by the elimination of non-essential functions. Provide the Civil Servants Agency with the means to implement civil service reform in a perspective of future integration into the EU structures, promote transparency and "merit" based organization in the public administration and in all state bodies.
2004 EU partnership	**Short-term priorities:** Adopt a medium term strategic plan for equitable representation of minorities, including adequate budgetary means, and ensure speedy implementation. Implement fully the Law on Civil Servants. Further develop the Agency for Civil Servants. Develop appropriate strategic planning and related allocation of resources in all Ministries and at Governmental level. Implement the Strategic Development Plan of the General Secretariat. Improve administrative transparency and adopt a law on public access to information. Reform the administrative procedures and administrative disputes laws in order to strengthen the enforcement of citizens' rights. (See also the part on the ombudsman).
2006 accession partnership	**Short-term priorities:** Implement fully the Law on Civil Servants. Depoliticize the recruitment and career advancement of civil servants and other public agents and introduce a merit-based career system. Improve administrative transparency. Adopt and implement a law on public access to information. Ensure the effective implementation of the Code of Ethics for Civil Servants. (See also the section on ombudsman).
2007 accession partnership	**Key short-term priorities**: Ensure that recruitment and career advancement of civil servants is not subject to political interference, further develop a merit-based career system and implement fully the Law on Civil Servants. **Short-term priorities**: Introduce a merit bases career system in order to build an accountable, efficient and professional public administration at central and local level. Ensure effective implementation of the code of ethics for civil servants. Strengthen administrative capacity, notably by developing the capacity for strategic planning and policy development as well as enhancing training, and develop a general strategy on training for civil servants. Implement effectively the measures adopted to ensure transparency in the administration, in particular in the decision-making process, and further promote active participation by civil society. Pursue implementation of the reforms of the law enforcement agencies.
2008 accession partnership	**Key short-term priorities**: Ensure that recruitment and career advancement of civil servants is not subject to political interference, further develop a merit-based career system and implement fully the Law on Civil Servants. **Short-term priorities**: Introduce a merit bases career system in order to build an accountable, efficient and professional public administration at central and local level. Ensure effective implementation of the code of ethics for civil servants. Strengthen administrative capacity, notably by developing the capacity for strategic planning and policy development as well as enhancing training, and develop a general strategy on training for civil servants. Implement effectively the measures adopted to ensure transparency in the administration, in particular in the decision-making process, and further promote active participation by civil society. Pursue implementation of the reforms of the law enforcement agencies. Ensure adequate administrative capacity to program and manage IPA funds effectively.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia.

Table 9: "EU priorities and the civil service reform in Serbia".

2002 SAA	Public administration should be reformed and its size made more efficient. Steps should be taken to improve administrative capacity, at all levels of government.
2003 SAA	Immediately upon adoption of laws, effective implementation and appropriate administrative capacity. Renewal of respect for the rule of law, damaged by the events of recent years. Reform of size and efficiency of public administration. Improvement in administrative capacity at all levels of government.
2004 EU partnership	**Short term priorities:** Adopt a comprehensive strategy on public administration reform including a precise calendar of actions, in particular address civil service pay system reforms and related human resource development measures; establish and maintain the relevant institutions and allocate the necessary resources; prepare the legislation on government and civil service.
2006 EU partnership	**Key short term priorities:** Make further sustained efforts to implement the reform of the public administration, including the civil service pay system, to ensure transparent recruitment, professionalism and accountability.
2007 EU partnership	**Key short term priorities:** Continue efforts to implement the reform of the public administration, including the civil service pay system, to ensure transparent recruitment and promotion as well as professionalism and accountability, strengthen the European integration structures, improve coordination through the public administration and parliament and pay particular attention to policy coordination.
2008 EU partnership	**Key short term priorities:** Continue efforts to implement the reform of the public administration, including the civil service pay system, to ensure transparent recruitment and promotion as well as professionalism and accountability, strengthen the European integration structures, improve coordination throughout the public administration and parliament and pay particular attention to policy coordination.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia.

Table 10: "Civil service system in Serbia and Macedonia, according to the legislation in force in 2008" (author's elaboration).

	Serbia	Macedonia
Law on Civil Servants adopted in:	2005	2000 (amended: 2001, 2002, 2003, 2004, 2005).
The goal of the law:	Excluded: political appointees and general service appointees.	Excludes: employed in the public sector, security sector, the customs and public revenue offices, employed in the agencies and state bodies formed *after* the adoption of the law.
The law makes distinction between the civil servants and political appointees:	Yes.	No.
The institution ensuring the management of the civil service:	Human Resources Management Center (HRMC) High Council of Civil Servants (HCSC).	Civil Servants Agency (CSA) General Secretariat, Ministry of Finance, human resources units in each institution.
The competencies of the body entrusted with the management of the civil service:	HRMC: Advertising competitions; preparing and ensuring the implementation of the general human resources plan for the whole state administration; co-ordinated modernization and development of the state administration; participating in the drafting of respective legislation; providing opinions on rulebooks and staffing tables of state bodies; supporting and guiding state bodies concerning personnel management and internal organization; managing the central personnel registry of civil servants and general service employees; managing the internal labor market; drafting the training program proposal for the general civil service, organizing professional training; and serving as secretariat to the HCSC as well as to the Government Appeals Board. HCSC: consultative role, preparation and adoption of standards for selection of civil servants, preparation of the code of conduct, selection and proposal of the three candidates short list for the election of the senior civil servants.	CSA: Regulates the functioning of the civil service under its jurisdiction, approves the inner organization and systematisation of the vacancies for the parts of administration under its jurisdiction; develops the policy and gives the advices concerning the issues of systematisation, description of the vacancies, selections, employment and dismissal of civil servants, equal representation, salaries and revenues, assessing of performance and disciplinary responsibility. Decides on the misdemeanours, coordinates the activities concerning the training of civil servants, keeps the register of civil servants; collects and elaborates data on the employment of the national minority members, monitors and ensures the coherent implementation of the laws and regulations concerning the civil servants and appoints the eventual incoherences, promotes the efficiency and efficacy in the work of civil servants, gives the recommendations to the bodies excluded from the compliance with the Law on Civil Servants.
Principles in recruitment as called for in legislation:	Merit-based.	Equal representation, equal access, equal conditions.
Recruitment:	The institution publishes the vacancy announcement and appoints the commission, which includes one member of HRMC. The commission undertakes the examination of the candidates, and creates a short list from which the head of the unit chooses one candidate.	The CSA publishes the vacancy announcement and establishes the criteria for selection. The head of department with empties vacancy appoints the commission, which includes one member of CSA. The commission undertakes the examination of the candidates, and creates a

	The law prescribes the instruction level and necessary experience for the different position.	short list from which the head of the unit chooses one candidate. The law prescribes the instruction level and necessary experience for the different position.
Probation period for new recruits:	Yes (duration prescribed by the law for different groups).	Yes (duration prescribed by the law for different groups).
Examination after the probation period:	Necessary condition for employment.	Necessary condition for employment.
Exceptions :	-	National minority members.
Promotion:	Possible through the transfer, as well as through the internal competition.	Treated as the new employment, so that the procedure is as for the recruitment with the public competition.
Levels of civil servants:	2 layers: senior managerial positions and executive position senior managerial positions executive positions: 8 types.	3 layers: executive, professional, administrative executive: 5 types professional: 4 types administrative: 4 types.
Recruitment of the senior civil servants:	Public or internal concurs. HCSC establishing the rules for the selection, tests the candidates and produces a shortlist of maximum 3 candidates to the minister of head of unit for appointment who then chooses to propose one to the government for nomination.	Public concurs obligatory. Idem as for the recruitment.
Pay system (ratio of the salary between the lowest and highest rank civil servant):	1:9	1:6
Performance measurement:	Prescribed by the law, first reports are awaited for.	Prescribed by the law, first report activity undertaken but not well implemented.
Performance based incentives:	Provided for by the law, still not implemented.	Provided for by the law, still not implemented.
Training:	Organized by HRMC, training program adopted in 2007.	Organized by CSA, general training strategy or training program not adopted yet.

Table 11: "Civil service reform in Macedonia, explanatory factors concerning the IA" (author's elaboration).

Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	Yes.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	Yes.
Was the issue part of the EU ***key*** short-term priorities?	Yes.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	Yes.
Amount of the EU financial support to the reform in general:	5,86
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	2,35
Reform perceived by the IA as:	Necessary for the inter-ethnic peace.
The main concern guiding IA's intervention in the field:	Security.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.
Were the recommendations made by the IA accepted?	X
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	X
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	X

Table 12: "Civil service reform in Macedonia, explanatory factors concerning the domestic level" (author's elaboration).

Domestic input for the change:	OFA.
Domestic actors pushing for the reform:	Albanian ethnic minority.
Level of conflictuality of the issue:	Mid.
Type of the conflict and main line of the conflict:	Inter-ethnic.
Did the issue concern the deep divisions in society?	Salience.
Type of the issue (salience - positional):	Ruling elite, political parties, Macedonian ethnic majority.
The main beneficiaries of the status quo:	Albanian ethnic minority.
The main beneficiaries of the change:	Yes.
Is the existing status quo strongly delegitimized by all relevant actors?	X
Two or more alternative solutions present?	X
Political fluidity/stability (in terms of the perspective of power of the central actors)	Yes.

Table 13: "Civil service reform in Macedonia, outcomes" (author's elaboration).

The procedure of law drafting:	X
The main deficiency in the adopted legislation:	Politicization and ethnicization of the civil service.
The main beneficiaries of such deficiencies:	Ruling political parties, ethnic minorities.
The status (2008):	Rule adopted and in line with international standards, partial implementation (good implementation concerning the equal representation, not satisfactory implementation concerning the depoliticization and professionalism. Agency for civil servants exists, it is functioning, yet it is corrupted as it is biased, not following the stated values.
The EU comment in the 2008 report:	Some progress has been made in further implementing the Law on Civil Servants. However, there was limited progress in strengthening the role of the CSA, in particular in overseeing the overall recruitment process, in assessing the performance of civil servants and in disciplinary procedures. Full implementation of the provisions concerning performance related supplements has not yet been achieved. Objective and merit-based criteria are not consistently used in recruitment and promotion. There is a lack of transparency and accountability in recruitment decisions by individual administrative bodies and the CSA lacks mechanisms for assuring the legality and regularity of those decisions. Senior management positions are often filled externally without sufficient concern for the professional qualifications and experience, in contravention with the law on the civil service. An important weakness of the current framework is that it does not allow the internal promotion based on merit.

Table 14: "Civil service reform in Serbia, explanatory variables concerning the IA" (author's elaboration).

	Failure to reform (2001-2003)	The reform (2004 -)
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.	x
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	No.	No.
Was the issue part of the EU ***key*** short-term priorities?	X	Yes.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	Yes.	Yes.
Amount of the EU financial support to the reform in general:	3, 5 (2002, 2003).	4, 9 (total, the 2004 excluded, see Table 6).
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	0,59%	0,44%
Reform perceived by the IA as:	State capacity building.	State capacity building.
The main concern guiding IA's intervention in the field:	Democratization.	Democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X	X
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.
Were the recommendations made by the IA accepted?	X	Mainly.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	X	X
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	X	Yes.

Table 15: "Civil service reform in Serbia, explanatory factors concerning the domestic level" (author's elaboration).

	Failure to reform (2001-2003)	The reform (2004 -)
Domestic input for the change:	No.	Yes (problem in implementation of the other reforms).
Domestic actors pushing for the reform:	Not present.	Ruling elite.
Level of conflictuality of the issue:	Low.	Low.
Type of the conflict and main line of the conflict:	X	X
Did the issue concern the deep divisions in society?	No.	No.
Type of the issue (salience - positional):	X	
The main beneficiaries of the status quo:	Civil servants, ancient regime.	Ruling elite, politicized civil servants.
The main beneficiaries of the change:	x	Citizens, uncompromised components of the civil service.
Is the existing status quo strongly delegitimized by all relevant actors?	Yes.	Yes.
Two or more alternative solutions present?	X	X
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.	Stable.

Table 16: "Civil service reform in Serbia, outcomes" (author's elaboration).

	Failure to reform (2001-2003)	The reform (2004 -)
The procedure of law drafting:	X	X
The main deficiency in the adopted legislation:	X	The possibility for politicization persisted due to the failure to establish a truly independent body for the recruitment and career.
The main beneficiaries of such deficiencies:	Not adopted	Ruling elite.
The status (2008):	Not adopted	Rule in line with IA standards adopted, rule implementation ongoing.
The EU comment in the 2008 report:	-	Overall, Serbia continues to have good capacity in the area of public administration. However, there was a slowdown in public administration reform during the reporting period. Further efforts need to be made to fully implement the 2005 Law on Civil Servants to improve the recruitment system and strengthen professionalism and accountability throughout the civil service. Independent and regulatory bodies performed well under difficult conditions. Greater determination needs to be shown by Serbian authorities to empower regulatory and independent bodies and to ensure that they operate effectively.

8. JUDICIARY SYSTEM

"Cento delinquenti fanno meno male di un giudice cattivo"
Francisco De Quevedo.

The role and the importance of the judiciary system in democracies has been underlined by several authors and even though not always explicitly included in the definitions of democracy, it is often recognized as its necessary condition. Thus, for Linz and Stepan (1996), the rule of law represents one of the five arenas of democracy, an "necessary condition for the political and civil society… and (together with the political and civil society it represents) the virtually definitional prerequisite of a consolidated democracy" (see Linz and Stepan, 1996, p. 10). Further on, "the hierarchy of laws*, interpreted by an independent judicial system* and supported by a strong legal culture in civil society" is one of the requirements for the rule of law to be established (Linz and Stepan, 1996, p. 10). For Morlino, the rule of law is one of the two procedural dimensions of democracy and it "connotes the principle of the supremacy of law, and entails at least the capacity, even if limited, to make the authorities respect the laws, and to have laws that are not retroactive, and are available to the public, universal, stable and unambiguous" (Morlino, 2004, p. 11-12). Here again the independent judiciary is one of the key dimensions of the rule of law. Finally for O'Donnell, the political, civil, human rights and procedures of democracy are defended by the rule of law, under which all citizens are equal, while the clear, publicly known, universal, stable and non retroactive laws are fairly and consistently applied by an independent judiciary.

The establishment of the efficient, independent judicial system is thus perceived by many authors as the necessary condition for the rule of law and essential precondition for democracy. Further on, due to the conception which prevailed in the communist countries, where the judiciary was perceived as part of the executive and where no professional criteria were used for recruitment and career, the EU and the international actors promoting the rule of law in the countries of the former communist block concentrated their attention on the independence of the judiciary and recruitment and career criteria as being key issues of

concern in their democracy promotion activities (see Piana, 2005). Such agenda, underlining the training, professionalism, introduction of the merit-based career criteria combined with the calls for the judicial independence, was also in line with the register tendency in the European democracies to increase the independence of the judiciaries also in those countries characterized by a tradition of civil law and bureaucratic recruitment (see Pederzoli and Guarnieri, 1997). It is then no surprise that the reform of the judicial system found its place in the baggage of the norms promoted by various international actors who consider the support to democracy in the world the core of their activities.

In the following sections we will assess the situation in the Macedonian and Serbian judiciary system in terms of their independence and efficiency and we will describe the development of the reforms in this field. In order to assess the independence of the judiciary we will describe the structure of the justice system, look into the procedure of the selection, appointment and career of the judges, examine the guarantees of the judicial independence built in the mechanisms of their recruitment and career, examine the procedure of the administration of the court system, analyze the financing of the court system and the social status of the judges in order to check for the existence of the mechanisms of financial independence of the judiciary and its staff. The judges' social position and security of tenure, the training and the code of ethics, the disciplinary measures and removal procedure can also influence the levels of the judiciary independence and will be included in the analysis. We shall look at both the existing normative framework and the procedures prescribed in the legislations, and try to assess the implementation of the existing legislative framework. The main sources of the data will thus be the official documents, the law drafts and law proposals, the amendments proposed and the final documents adopted and put into practice, whereas for analyzing the implementation of the law proposals, the legislative framework, the budgetary resources, we will use official statistics, when available, and secondary sources of information

As far as the efficiency of the justice system is concerned, it will be assessed by looking at the official statistics (number of cases solved, dead log, number of cases submitted, the enforcement of the judicial decisions, number of cases solved by judge etc), and we will try to identify possible sources of problems by examining the working conditions, the material and financial resources available to the judiciary, the territorial organization of the judiciary, and the judicial procedures. Here again, the legislative framework and the official statistics will be

examined, supported by the data on the implementation revealed by the examination of the secondary literature and existing analysis.

As we will see, in the cases of Serbia and Macedonia both EU and CoE were engaged in the promotion of the judiciary reform, paying special attention to judicial independence and efficiency. At the same time, the judiciary appears to be one of the most difficult reforms in both countries and brought to rather unsatisfactory results: in Serbia we register the complete failure in providing legal guarantees of the judicial independence, while in Macedonia the adoption of adequate legislative framework is followed by very difficult implementation.

8.1. Serbia: Reform Without a Change

8.1.1. Struggle with the Heritage

Even though on the political agenda, since the change of the regime in 2000, the reform of the judicial system in Serbia, so promised and expected, remained one of the reforms without results[257]. The norms aiming to create an independent and efficient judiciary were introduced, but the changes did not take place as the rules adopted were either insufficient or not implemented.

The judicial system inherited after the change in 2000 was inefficient, corrupted, politicized and as such it lacked the legitimacy and trust of the citizens[258]. Such situation was mainly the product of the continuous undermining of the judiciary in the period of Milošević's regime, when the nominal constitutional guarantees of independence were not realized in practice and the judiciary was made completely dependent on the regime. The appointment, dismissal, as well as the material status of the judges were in the hands of the executive, either due to the legislation in place (this was the case of the appointment procedure), or to the abuse of power (which used to take the shape of dismissals and political harassment of the judges). The regime propelled the corruption of the judicial system by keeping the wages low, ensuring a situation where the political corruption and state capture were nourishing the administrative corruption of the judges. These two phenomena represented the basis to the judiciary's loyalty to the regime, corrupted judges being unable to refuse the regime's pressures[259].

[257] See Hiber, 2005. Also Dallara, 2007, 2008.
[258] See Hiber, 2005.
[259] See Vukovic, 2002, Begović and Mijatović, 2001.

The reform of the judiciary was declared by the new elite to be one of the most "urgent" reforms and was conceived as "something we can and shall immediately undertake"[260]. While the constitutional reform would, among other, also tackle the judicial system, the opinion prevailed that the reform should be conducted through changes in the legislations, and then the constitutional reform would just bring the constitutional guarantees to the already adopted and developed solutions. [261]

The reform "started" in 2001 by the changes introduced in the staff. The judges that were dismissed on political grounds under the previous regime were re-appointed and the presidents of courts suspected of cooperation with the old regime were substituted by the new staff (while this was considered a necessary step, the changes of the presidents of courts rose some concerns, as in some cases it took the shape of political purges[262]). Another important initial decision was to enforce the existing legislative framework while preparing the new ones.

The government in the meantime proceeded with drafting the laws aiming to reform the judicial system. The core concept of the government's proposal was the discontinuity in the institution of judiciary, aiming to use the reform of the judiciary to remove all judges suspected of abusing their power and of human rights violations during the previous regime[263]. The matter was to be solved by the adoption of the Law on the Judges and Courts in which the organization of the judicial system was the most important part. The law was dismantling the existing courts and establishing new ones, a process that further required the re-appointment of all judges in the new courts. This way, the lustration of the judges and the "cleaning of the incompetent cadres of the ancient regime" was to be undertaken through the establishment of the new judicial system and such, ex-novo created judiciary, would be given full independence from the other two branches of power. All procedures for appointment, career and dismissal, as well as the financing of the judiciary, were regulated in this law draft in a manner that ensured the full independence of the judiciary and the removal of any political interference.

The law draft was accepted by the government and sent to the public debate by November 2001. Before the debate finished, another reformist draft was proposed to the assembly by the DSS deputies.

[260] Vojislav Koštunica, speech on the conference: "Strategija reformi" odrzanoj 15/09/2001.
[261] Idem.
[262] From the interview with M.S, judge of the first instance court, August 2008.
[263] See Hiber, 2005.

The law proposed by DSS underlined the policy of the continuity, especially in the judicial staff. It aimed to introduce the judicial independence without lustration (guaranteeing the security of tenure to *all* judges) and to increase the efficiency of the judicial system through a slightly modified organization of the courts. The law was adopted without passing the public debate. Apart from the lack of consulting the civil society, it was declared to be in line with the European democratic standards.

The laws adopted in November 2001[264] were a product of the compromise between the DOS (DS) and DSS in which the policy of continuity prevailed. Such compromise was a product of a larger bargaining process in which the judicial reform and the Law on Work proposed by the government became part of the political bargaining in the unofficial negotiations between DOS and DSS over the reconstruction of the government. The government and the DS showed their disapproval towards the legislation by not taking part to the rule adoption process: the Minister of Justice and the government's representatives were not present to the session, the DS' deputies did not participate to the discussion, while the law was adopted with a large majority due to the support received by the opposition as well, namely Milošević's SPS. During the discussion, the actors that refused to vote for the bill (SRS) argued that the law proposed by DSS was substantially the same law drafted by SPS in 1996 but which was refused by the parliament. The DSS deputies admitted that some solutions were "inspired by this proposal"[265].

The most important and most positive changes introduced by the legislations in 2001 were:

The new procedures of appointment and dismissal of judges and public prosecutor were introduced, aiming to ensure the prevailing of professional criteria through the establishment of the High Judicial Council (established as a specialized independent body). The composition of the body was designed in a manner to give the decisional majority to the judges and their representatives in the council;

The material independence of the judges was pursued by the minimal wages guaranteed by the law, which then were at very high levels (for example, the salary of a judge of the

[264] The Law on Judges, Law on public prosecutor, Law on the High Judicial Council, Law on organization of courts and the Law on the territorial organization of courts and public prosecutors offices, published in the Official Gazette, 63/2001.

[265] http://arhiva. glas-javnosti. co. yu/arhiva/2001/11/01/srpski/P01103118. html, http://arhiva. glas-javnosti. co. yu/arhiva/2001/11/03/srpski/D01110205. shtml, http://arhiva. glas-javnosti. co. yu/arhiva/srpski/arhiva-index. html.

constitutional court was to be equal to the salary of a minister). The HCJ was given the power to further increase the salaries when it considered it to be appropriate;

Specialization of the courts through the installation of appellate courts and administrative court, as well as the changes of competencies of the High Court that was supposed to become the cassation court;

The legislation also tried to give other guarantees of independence and efficiency: the role of the court's president in supervising (but not influencing) the work of the judges, as well as the role of the supervision of the higher courts respect to the lower rank courts was clarified[266].

The lack of a real consensus over the laws adopted as a product of the inter-party trade became the most serious obstacle in the implementation phase. Only few months after the adoption of the new procedure for the judicial appointment and the formation of the High Judicial Council (even though with delay), the conflict burst between the judicial and executive (legislative) and produced those changes in the law that significantly undermined the High Judicial Council. The Law on Judges, Law on the High Judicial Council, Law on the Public Prosecutor were amended already in July 2002 (then, further amendments followed in 2003, 2004, 2005), gradually taking away the powers of the high council and bringing them back to the national assembly. The most controversial change was introduced in July 2002 with the amendments to the Law on Judges. The changes introduced allowed the "special conditions of dismissal of judges", opening the possibility for the lustration to be conducted within one year. In order to ensure the executive's influence over the process, the Minister of Justice was given the right to propose the dismissal, while the assembly was given the instruments to avoid the High Judicial Council in the process of the judicial appointment. Considering the control executive and political parties keep over the Serbian parliament[267], the ruling coalition was given the possibility to dismiss the judges it considered "politically inappropriate". This "solution" was meant to prevent the old regime supporters, still present in the judiciary, to influence the election of the judges. The DOS and the supporters of the law perceived the independence of the judiciary without lustration as extremely dangerous for the reforms, and thus, in the name of the democratic reforms and greater good, such independence was taken

[266] On the content of the changes introduced see also Dallara, 2007, 2008.

[267] As we will see in the section dedicated to the parliament, due to the Law on Elections of 2000, political parties' statutes and since 2006 thanks to the article 102 of the constitution, the mandate of the deputies is controlled by the political parties. Through a system of blank resignations, the political parties ensure that the deputies are always following the party's line, this way subordinating the assembly to the political parties of the ruling majority.

away[268]. However, this solution was raising a series of concerns, as it failed to ensure the prevailing of the objective criteria in the process of dismissal-appointment, opening the possibility for the lustration to become nothing more than a political purge and a further politicization of the judiciary. The lustration itself was, and still is, a source of pressures over the judges as well as an obstacle to their work, as it creates a continuous sensation of insecurity (from the interview with D.Z., judge of the first instance court in Nis). The fear of lustration that, in the absence of clear criteria and seen the overall politicization of all institutions, is perceived as an excuse for political purges, thus encourages the judges, fearing their own position, to seek for the political protection of the new masters. "They say "lustration", "de-politicization", but who will decide? According to what criteria? It is not normal that the judges follow the parliamentary elections with fear and consider the electoral exit as a verdict for their future, but this is the case in Serbia" (from the interview with M.S., judge of the first instance court in Belgrade, August 2008).

The procedure of assessing the constitutionality of amendments introduced in July 2002 was immediately initiated by the constitutional court, an initiative coming both from inside the judiciary (the association of prosecutors, judges, lawyers) and from different NGOs. The constitutional court suspended the implementation in October 2002, and decided, in February 2003, that the provisions were unconstitutional[269]. The role of the constitutional court in defending the judiciary from the attacks of the executive and legislative in this period showed to be crucial. The period 2002/2003 represents a period of real intra-institutional war for the control over the judiciary: the executive was passing the amendments and decisions one after the other, aiming to re-establish control over the justice, while the constitutional court went on declaring them unconstitutional. The effort to bring the presidents of courts and public prosecutors under a stronger executive control were prevented by the decisions of the constitutional court.

The question of the continuity-discontinuity in the judicial staff was, and still is, a most important obstacle in the reform of the Serbian judiciary. The number of judges is considered by the police makers to be too high, as well as the number of employees in the judicial system (about 2.500 judges and 8.500 administration staff in a country of 8.000.000 citizens, compared with 630 judges and 2.800 in Macedonia with 2.000.000 of citizens), calling for cuts

[268] Hiber, 2005.

[269] Odluka ustavnog suda IU – 122/2002 od 11/02/2003, Sluzbeni glasnik RS 17/2003 I 25/03, I odluka ustavnog suda IU – 122/2002 od 03/10/2002.

in the judicial system, while the Judges' Association of Serbia underlines that rather than overcrowded, the judicial staff is not well distributed, neither adequately structured (a high number of clerks is paired to a very low number of assistants to judges). The territorial distribution of the courts (and consequentially the number of judges in proportion to the workload and number of citizens) was reported in the interviews as inadequate[270] and identified as one of the causes of the so often complained for inefficiency due to the unequal distribution of the workload. The analysis of the workload showed that the growing inefficiency of the courts goes together with the growing efficiency of judges in terms of the number of cases solved. However, if compared to the Macedonian judges, the Serbian judiciary does appear overcrowded and extremely unequally distributed over the territory. Thus, the Serbian judge solves an average of 454 cases per year, with a very low efficiency if compared to his Macedonian colleague, solving 1137 cases per year. However, in Serbia there are huge differences between the courts, in some case the judges receive less than 1 case per month (12 per year), whereas in bigger cities they handle more than 90 cases per month, showing that the low comparative efficiency is mainly the consequence of an unequal distribution of the workload and inadequate territorial organization.

The presence of the judges appointed by the ancient regime brings to a situation where the judiciary is a strong proponent of the policy of continuity. On the other hand, the lack of trust in judiciary (very high in Serbia: according to the public opinion surveys only 29% of Serbs trust the judiciary system[271]) legitimates the executive's requests for lustration and control. The problem of the continuity/discontinuity and the executive's control over the judiciary was particularly aggravated in 2003 when, after the assassination of the Prime Minister Đinđić, the state of emergency was introduced. The government used the state of emergency to put the opponents aside in the line of judiciary, 25 judges being unlawfully retired and replaced by judges appointed through a politically driven process. Amendments to the Law on Prosecutors were also made, giving the Minister of Justice the power to nominate the prosecutors. These attempts to impose control over the judiciary were all challenged in front of the constitutional court, making the constitutional review a defense weapon used by the judiciary. But while the judicial system is one of the important players defending its

[270] See for example the report of the Supreme court of Serbia for 2007, where an inadequate territorial network of the courts is perceived as one of the most urgent issues to tackle. Also, interview with D.Zdravkovic, first instance court of Nis, august 2008.

[271] Data from the CPS researches of public opinion, Mihajlovic, 2005.

independence and security of tenure of the post of the judge, the same principle also protects the undemocratic, illiberal, incompetent or compromised members of the system.

What started as a conflict in the political elite between the continuity and discontinuity in the reforms immediately after the change of the regime, gradually turned into a conflict over the balance of powers between executive and judicial, where those democratic political parties that were at the beginning advocating the policy of "continuity and independence" gradually changed the preference and embraced the position "control and discontinuity". This becomes evident if we compare the level of independence granted to the judiciary by the 2001 legislation and the level of independence envisaged in the draft constitutions proposed by the government in 2004, in the action plan for the reform of the judiciary adopted in 2006 and in the constitution adopted in 2006, in each of which the main initiative came from the party of the prime Minster Koštunica, DSS. There appears to be a consensus between the strongest political parties over the necessity to lustrate and thus re-appoint all judges, the differences over the criteria representing the apple of discordance. At the same time, in the judiciary there appears to be a diffused refusal of the politically concentrated process of lustration as the judges, supporting or not the necessity to clean the judiciary, all underline that there are no legal bases in Serbia able to ensure the professional, merit-based process of re-appointment of judges and that any lustration process in the absence of professional criteria would do more harm than good.

8.1.2. The Reform without Change

Unlike the turbulent period 2001-2004, when the legislative framework of the judiciary was under continuous change through amendments and constitutional court interventions, in the period of Koštunica's government we count a less dynamic period where the only substantial change in the Law on Judges re-integrated the assessments of the constitutional court[272]. The changes introduced with the amendments in 2005 and 2006 did no longer tackle the question of the nomination or dismissal of judges and prosecutors, but concerned the salaries in judiciary. The difficulties in the implementation of the 2001 legislation and continuous conflict between executive and judiciary have undermined the implementation of the articles 30-35 of the Law on Judges concerning the salaries of judges. Thus, in 2005, the basic salary of the judges in the High Court, which was supposed to be at least at the level of the ministerial wage, amounted to only half of it. The government tried to change the basic salary of judges

[272] On the developments of the reform of the judiciary during Koštunica, see also Dallara, 2007, 2008.

by a governmental decision prescribing different wages for the employed in executive and in judiciary. The constitutional court proclaimed this decision illegal as it was against the Law on Judges, bringing to the amendments of the Law on Judges in 2005, through which the wages in judiciary were equalized with the wages in the ordinary administration and further diminished, while the power to propose the increase was taken away from the HCJ and made subject to the ministerial veto. The inadequate compensations for the employed in the court administration is an even more serious problem, as in some cases the wages of the clerks are even under 300 Euros per month, and this unsatisfactory financial status, especially for the administrative staff, is often a cause for the corruption of the court clerks.

The control of the performance and the concept of minimal workload were also introduced, as well as the number of cases to be solved per month established for each category of judges, but the salary and compensation were not linked to the performance. "It is said that the efficiency and performance criteria should be taken in consideration for promotion and further career, yet this is not the case. Whether you fulfill the norm or not it is all the same" (from the interview with D. Zdravković, judge of the court of first instance in Niš, August 2008).

As a positive development in this period we count the adoption of the Law on Education of Judges in 2006. Until the adoption of this law, the judicial training was undertaken in the Center for the training of judges organized by the Association of Judges in cooperation with the Ministry of Justice. The center was very active in providing training, seminars, round tables, courses, gaining the approval of the international actors and the users of such service, but the lack of an adequate legislative framework regulating the training of the judicial staff was making the training center a weak, ad-hoc institution. The Law on Education of Judges finally offered a legal basis for the functioning of the training center and regulated the questions of the curricula for the judicial staff. According to the law on training, the education is both a right and duty of the judges, prosecutors, their assistants and other employees in the judicial system, in certain cases being mandatory by law. The High Judicial Council was also given the power to make the training mandatory when it considered it appropriate. Both initial and permanent training courses are organized, some of them made compulsory, other strongly recommended. The content of the education is decided by the High Judicial Council in the case of the training prior to assuming the office, and by the training center itself in the case of permanent education. The high judicial council is authorized to supervise the implementation

of the education programs. The education and training programs are financed by the state budget. The introduction of the training center was a very positive step, seen the fact that the legal education in Serbia is considered not sufficient to produce high quality judges. The training in the human rights standards and gradual improving of the legislation were often underlined in the interviews as one of the few positive developments in the recent years' positive development.

The two most important documents adopted in 2006 were the national strategy for the reform of the judiciary and the new constitution of Serbia. As argued by the representatives of the judiciary, these documents have actually weakened the judiciary and hampered its independence, and in many aspects represented a negative turn from the solutions adopted in 2001. Unlike the starting period in 2001, when legislators seemed devoted to the idea of an independent judiciary, both the draft proposal of the constitution as well as the strategy for the reform of the judiciary and constitution adopted in 2006 actually opened the door to a stronger political influence over the judiciary. The main problem concerns the composition of the High Judicial Council whose 11 members are all either appointed by the simple majority in the assembly (8) or are partisan by definition (minister of justice, president of a relevant committee in the assembly). Even though the Venice Commission's opinion on the articles of the constitution concerning the judiciary was requested by the domestic elite, and the detailed instructions in order to ensure the judiciary independence were available, the final document only apparently followed the CoE recommendations, introducing structural changes to the system in a way to maintain the political control over the judges. In addition to the mechanisms that do not prevent the political influence in the process of the election of judges, the constitutional law opted for a policy of discontinuity according to which all courts should be closed and then established again, meaning (according to most of the interpretations) that all judges shall be re-confirmed and re-appointed as well. In a situation where there are no real guarantees for the independence of the judges, where the re-nomination is in the hands of the body whose political independence is undermined and where no clear criteria for nomination are used, this provision raises serious concerns.

The new laws regulating the judicial system are still to be adopted. The National strategy for the reform of the judiciary and the action plan adopted in 2006 prescribed the necessary steps that shall establish an independent, efficient, transparent and accountable-for judiciary. However, the strategy has been criticized for its failure to provide an effective self-governing

structure of the judiciary, for not ensuring the independence of the prosecutor and for prescribing the prohibition period[273]. According to Tomić, member of the high judicial council, the constitution actually opted for and further developed the bad solutions envisaged in the national strategy for the reform of the judiciary. The possibility to mend the shortcomings identified in the constitution through the ordinary legislation exist, but the lack of a constitutional guarantee to protect the judicial independence means that the events of 2002-2003, when the executive was struggling for control over the judiciary might easily repeat. The law drafts prepared in the beginning of 2008 by the Ministry of Justice tried to face some of the shortcomings (being declared by the Venice Commission rather in line with the European standards, even though with some issues to be faced, especially in the Law on Judges). Yet it is to be seen whether the solutions proposed in the law draft to overcome the deficiency of the constitution will find their place in the adopted documents. Judging by the Serbian record in respecting the recommendations of the Venice Commission and international expertise, there is a fear that the acceptable law draft will turn into its caricature.

The constitutional law offered a possibility for the "lustration" process as it stated that the old courts shall cease to exist and new courts would be formed. The provision apparently opened the door for the lustration and re-appointment of all judges, but the imprecise formulation (it is the courts, not the judges, to be created ex novo, while both the old and the new constitution guarantee the security of tenure for judges) combined with the unconstitutionality – underlined by the exponents of the judiciary – of such provision, seen that the security of tenure is guaranteed by both the old and the new constitution, opened a conflict over its interpretation[274]. Further on, the criteria for re-confirming the judges are still not clear, leaving the possibility opened to both lustration and improving, but also for the further politicization and degradation of the judiciary, all depending on whether professional or partisan criteria would be used in the potential procedure of re-appointment. Up until mid-2008, the re-appointment was not undertaken, neither the appellate courts have been established. The blockage in the assembly (both due to the political situation, concentrated on other issues, as well as to the conflict over the judiciary reform) brought to the blockage of the process, resulting in a situation where no new judges are appointed, neither those that no

[273] For the reform of the judiciary in Serbia as a case of the fake compliance, see also Dallara, 2007, 2008.

[274] Omer Hadziomerović, deputy president of the Association of Judges of Serbia, interview for Danas, 13.11.2006. Also interview of the author with Zdravković D., judge of the court of the first instance in Niš, August 2008. For the analysis of the Article 7 of the law on Implementation of the Constitution and discussion on the possible interpretations and its constitutionality, see the analysis of Rakic-Vodinelić, 2007.

longer have the right to work (on the basis of Law on Retirement or even due to criminal charges against them) are not dismissed. The famous lustration is still pending as a sword over the judiciary, reappearing every time the reform of judiciary is tackled. At the same time, the persistence of this status quo and delay in re-appointing the judges is "creating an extremely unpleasant sensation of insecurity of the judges for the future"[275] and the delay is opening the door to unprofessional judges to seek even more intensively the political protection of the parties[276]. The whole procedure of reappointment, if conducted on the clear, transparent criteria based on the professionalism, may also be a very positive step: first of all it could increase the quality of the judicial staff, and it would also put an end to the continuous disputes between the political parties over continuity/discontinuity serving as a step to regain legitimacy and trust in the judicial system. Yet, the problem of the still unclear criteria for such step persists. The draft of the Law on Judges does not prescribe any particular procedure for the re-appointment of the old judges, thus giving no guarantee that the existing judges will be re-elected in case the article 7 of the constitutional law is applied. Further on, the article 51 prescribes that the HCJ shall propose two candidates for each post of judge to the assembly, raising concerns of further politicization of the whole procedure (Venice Commission opinion N. 464/2007). The government gave their reassurance that the final version of the law will prescribe the procedure for the re-appointment as well.

The reform of the judiciary was also supposed to face the elementary material problems of the courts: introduction of computers in tribunals (as well as training the staff to work on the computers), equipment for the offices, financial means for specialists, bad infrastructure conditions, lack of material working conditions. Many of these issues have been already dealt with, mainly thanks to international donations. However, the critical material situation still persists, as it is well depicted in the annual work reports of the High Court.

8.1.3. The Results of the Reform

As already mentioned above, the reform of the judicial system is one of the fields in which the continuous legislative changes produced almost no effects in terms of establishing an independent judiciary system.

As far as the efficiency is concerned, there is a significant percentage of unsolved cases that do not actually seem to decrease (on the contrary, they seemed to increase if compared to

[275] From the interview with the Zdravković D., August 2008.

[276] From the interview with Miodrag Majič, president of the Belgrade court of first instance, published in Danas, 13.11.2006.

their number in 2002). However, if we consider the fact that the number of cases submitted to the court was also increasing, and if we consider the number of cases solved per year, then it can be seen that there was some progress in efficiency of the employed, even though it is obvious that the system is not capable to cope with the increasing number of cases.

Corruption is another significant issue when it comes to the judiciary. According to the survey on the corruption in judiciary conducted in 2004 (Begović et al.), about 85% of the people working in the judiciary (judges, prosecutors, representatives before courts and staff) believe that there is corruption in the judicial system (21% believes that the corruption is very widespread, 64% that there is a certain level of corruption). According to the results of the research, the main channel of corruption goes through the executive and legislative (thus institutional corruption/state capture) where the judges trade their decision in exchange for a better position, promotions or some material advantage (about 23% of respondents claimed that the channel of corruption are via representatives of executive and legislative branches, while about 75% of respondents testified that the corruption in the judiciary is influenced by the dependence of judicial on the executive). The specialized staff (judges, lawyers, prosecutors) is considered to be the main link in the chain of corruption: more than 50% of the interviewed members of the judiciary considered these figures responsible for the corruption in judiciary. The administrative staff is also rather exposed to corruption, often due to their inadequate material status[277].

Consequently, the citizen's opinion on the judicial system remained rather negative. According to the CeSiD surveys, only 32% of citizens trusts judges, while more than a half (58%) does not trust the judiciary. Even though very low, this result places the judiciary above other two branches of government (legislative 27:65, executive 30:62) as well as above the political parties and politicians, which are the two least trusted institutions.[278] The level of trust seems to be higher than in 2000 (when only 23% of citizens declared to trust the judicial system), but the same is true for the level of mistrust (in 2000 45% of citizens declared that they do not have any confidence in the judicial system). Media and politicians are also a source of low trust in judiciary, contributing with their sometimes irresponsible statements to the delegitimization of the system: "Searching for sensations, media are often reporting cases of bad practice, not paying attention to our everyday work when people are honestly doing their

[277] All data are taken from Begović et all, 2004.
[278] Mihailović, 2005.

jobs. Similarly, politicians are also irresponsible in their statements concerning judiciary. You can often hear them criticizing the court decisions, or giving statements that leave ordinary people with the sensation that the politicians are really controlling the judiciary, even when it is not the case. How can you pretend citizens to trust the system then?" (from the interview with M.S.).

As far as the role of the judiciary in promoting and protecting human rights is concerned, due to its lack of independence, to the shortcomings in the legislative framework (the anti discrimination legislation is not up to the European standards) and due to the lack of adequate understanding of the human rights protection, the most socially marginalized groups (especially the LGBT population, the sex workers and the drug addicts) are often subject to discrimination by the judiciary system. Even when they decide to seek justice before the courts, the victims of the homophobia-based violence are considered responsible of provocations: "As the discrimination based on the sexual orientation is not recognized in the legislation, if you try to bring the case in front of the courts, even if it is about physical violence, the answer you get is something like 'you should not have been intimate with your partner in public', or 'you should have not publicly proclaimed your sexual orientation in the first place'. Obviously, there are also judges who are more understanding towards the issue, but given the slow efficiency of the judiciary, long procedure, and lack of adequate legislative frameworks, the capacity of the judiciary to protect the basic human rights of the marginalized groups is low" (from the interview with Ajdarević J., human rights activist, Lambda, Niš, 2008).

The reform of the judicial system in Serbia is still pending. In the period immediately after the change of regime some positive steps were taken (the laws adopted, even though without possibility for public discussion and without proper involvement of the non-governmental actors, were assessed as a very positive step). However, the changes introduced in the legislation in 2002 and 2003, the conflict over the power that took place and the consequent uncertainty of the legislative framework has seriously undermined the positive achievements from 2001. The implementation of the laws introduced was also difficult, the main reasons being both the political interference as well as the lack of financial resources. The documents adopted in 2006 do not represent an adequate framework for the development of an independent judicial system The lack of clear constitutional guarantees and constitutional

solutions opening the door to political interference are significant problems, especially in the light of the reluctance of the Serbian ruling elite to give away their control over the judiciary.

8.1.4. The International Actors and the Reform of the Judiciary

The reform of the judicial system was immediately perceived as one of the priorities of the international actors engaged in helping Serbia's newly established democracy to consolidate, both due to the importance of the independent judicial system for the democratization and to the Serbian judiciary's very difficult situation. The pressures for the reform of the judiciary were exercised both by the EU and by the Council of Europe, both providing the material resources and making technical assistance available (please see the tables 5, 8, 10 in the appendix). As we can see from Table 5, the reform of the judicial system was subject to the priorities underlined in the commission's reports in 2002-2003, and found its place among both short terms and key short terms priorities in the EU partnerships 2004, 2006, 2007[279]. All priorities underlined the importance of the establishment of an independent judiciary and of avoiding political interference, individuating the main problems in ensuring the independence of judiciary in the appointment criteria and procedures and in the lack of an independent budget. In the conclusions of the EU Council of ministers on the Western Balkans, the reform of the judiciary and security sector reform were often underlined as the most urgent issues to tackle. Judging by the tone of the commission reports, the pressures of the EU to pursue the reform of the judiciary was growing in line with the developments in the Serbian judicial system: the appraisal for the steps undertaken at the first year of transition, with the growing severity of the tone, while the priorities became more numerous and more precise. However, the conditionality effect in pursuing the judiciary reform was inconsistent due to the EU's overall approach to Serbia that was mainly security-guided and concentrated on other political issues[280]. As it was underlined in the Multi-annual indicative program for Serbia and Montenegro 2004-2006 (but this is still the case due to the Kosovo issue):

"The first MIP (Multi-annual Initiative Program) 2002-2004 has striven to support the progress of Serbia and Montenegro in the above-mentioned difficult political and socio-economic scene (*political conflict, destiny of the state union, problem of Kosovo and Southern Serbia, I.M.*) which has, to a certain extent, hampered the efficiency and results of the CARDS assistance to support reforms and progress in the SAP".

[279] On the EU promotion of the judiciary reform in Serbia see also Baracani, 2005.

[280] On the "vagueness" of the EU in approaching the reform of the judiciary in Serbia and on the lack of credibility in promoting the reform, see Dallara, 2007, 2008.

While the reform of the judiciary was identified as one of the key reforms in Serbia, due to the lack of domestic consensus over Serbia's foreign policy, the political concerns of the EU/ Serbia relations prevailed, pushing the domestic reforms behind. Until now, the conditionality linked to the judicial reform has not been given strong accent. In the action plan of Serbia for accessing the EU in the field concerning "ensuring the independence of the judiciary", the adoption of the constitution is considered as a step ensuring the judicial independence as, according to the Serbian authorities, the HJC is an independent institution.

Beside the conditionality, the efforts to promote the judicial reform and improve the situation in the judiciary also included technical as well as financial assistance, as it can be seen in Tables 8 and 10. Justice and home affairs programs received about €80.5 millions from 2000 to 2006[281], about €34,8mil of which were channeled to the judiciary (including the prosecutor's office). The financial assistance aimed primarily to improve the working conditions (especially with the introduction of the IT equipment), the training (thus, the Judicial training center was realized and until 2006, when the legislation provided the state financing, also financed from funds collected by different donors), education and socialization through the organization of conferences, round tables, seminars. Thus, as far as the action of the international actor is concerned, we can notice that EU used conditionality in combination with socialization, in order to promote the reform of the judiciary. The credibility of the conditionality was hampered by the overall EU approach to Serbia, whereas the socialization, given the diffusion of judiciary independence as a norm in the western democracies, and given the continuous EU practice of monitoring, praising, criticizing and suggesting, round tables organized and technical assistance offered to Serbia, can be judged credible. The less conflictual issues that were tackled by the EU financial assistance (training, equipment) registered, as we saw, positive developments. The program's specific conditions did not include the establishment of an independent judiciary but concentrated on practical issues concerning the implementation of the programs (see table at the end of the chapter).

The success of the strategy, as we saw, was almost insignificant, particularly in the field of the judicial independence, but the ruling elite at least showed a tendency to fake compliance, testifying a certain level of importance it associates to the international recognition. We described the behaviour of the Serbian decision makers towards the Venice Commission's assessment on the constitutional draft. The international experts' assistance was requested in a form that followed the social influence pattern, the recommendations were even accepted, and

[281] Data: European Agency for reconstruction. Quarterly report to the EU Parliament, January-March 2008.

the engagement of the IA in the procedure of the law drafting was widely publicized, testifying the tendency of the decision makers to seek for the international legitimization of its work. One of the main points during the government's campaign for the referendum on the constitution was exactly the fact that the articles concerning the judiciary were considering the Venice Commission's recommendations. However, the fact that the respect of the international standards and the search for recognition was only an instrumental, strategic step, is testified by the shortcomings, inconsistencies, loopholes introduced in the legislation and by the hampered-with implementation. The potential costs deriving from the introduction of the new rules were avoided as the new norms were either not implemented, or changed. The CoE report on Serbia 2006 clearly depicts the situation: "It was regrettable that comments provided by the Council of Europe experts have either not been properly taken into account (as in the case of the criminal code) or have not been requested at all".

8.1.5. The Assessment of the (lack of) Change: Explanatory Variables

We saw that the judicial reform in Serbia is actually still pending, the lack of judicial independence being the most important issue to tackle. We also saw that in the reform of the judiciary we can actually individuate few cycles when the trend of the events was following similar directions:

In 2001 we had positive, almost promising developments: the unconstitutional decision on the dismissal of judges brought by the previous regime were annulled, the respect for law was established as a principle to follow and the drafting of new legislations in the newly established Council for the reform of judiciary initiated. These positive efforts were partially obscured by the political conflict, but however, the laws adopted were positively assessed.

In 2002 and 2003, soon after the law adoption, the whole process took another direction. The new legislation was not properly implemented, and it was amended in a way that clearly undermined the judicial independence. The executive showed strong reluctance to hand the control over the judiciary, defended by the constitutional court and its rulings.

In the period 2004/2005 we witness a less turbulent situation: the laws were amended in order to re-integrate the rulings of the constitutional court, but the political interference in the appointment remained. The lack of financial independence of the judicial system in that period became an issue of concern: the salaries in judiciary were radically diminished by the amendments to the Law on Judges. The lack of any change in that period is also evident from the lack of changes in the judiciary's budget.

Finally, in 2006, in agreement with the EU priorities, the national strategy for the reform of the judiciary and the action plan on the implementation of the strategy, the new constitution and a series of laws[282] were adopted. The budget for 2007 showed a significant increase in comparison with the previous years (see table 1 in Appendix). As the legislative framework regulating the judicial system is supposed to be changed, and the reform to be implemented, it is still too soon to assess the developments in the field. However, both the National Strategy as well as the constitution adopted are not well promising when it comes to the independence of the judiciary.

The lack of independence of the judiciary is caused by the executive's strong interest in maintaining control over the judges: as we saw, the channels of corruption in the justice system seems to go from the representatives of the executive and legislative to some judges that, being dependent both in terms of their career as well as financially, are keen to exchange sentences for the security of their post or for material benefits. The lustration process seems necessary, both if the ruling elite is to be finally deprived of the excuse for the control over the judges, if the trust in the system is to be restored, as well as if the judiciary is to be cleaned of the incompetent or corrupted members. But it is difficult at present to imagine the lustration process not driven by the interest of political parties and based on clear, transparent, professional criteria. Who shall be given such competency? The legislative is controlled by the executive that has a strong interest in maintaining its control on judiciary, while the process of lustration is obviously feared by members of the judiciary.

What we witnessed in 2006 can be judged as a step, but a very partial one. The pressure of the international actor was growing, domestic change agents (mainly associations of judicial professionals, Law University and specialists and different NGOs, media and public opinion) were pressing for the change, but at the same time the veto players in executive as well as in the part of judiciary were able to block the reforms. The result is, once again, a partial compliance, or better say, a reform strategy that can be welcomed for the many good solutions it offers, but according to which the political parties are still able to maintain their control (for the resume of the situation in Serbian judiciary, please see the tables in the appendix).

[282] Law on the Witness Protection in the Criminal Proceedings, Law on the Amendments of the Law on Courts, Law on the Amendments of the Law on Judges, Law on Amendments of the Criminal Procedure Code, Decision on the National Judicial Reform Strategy, Criminal Procedure Code, Law on Training of Judges and Public Prosecutors.

8.2. Macedonia: Reform Without Implementation

8.2.1. The First Developments in the Field of Judiciary

Similarly to Serbia, the reform of the judiciary was one of the most difficult reforms in Macedonia. The situation in the judicial sector well represented the whole spectrum of the problems the new democracies are faced with: the financial austerity, the lack of material, technical and human resources, the backlog of the cases, slow and inadequate procedures, the lack of independence and the politicization, corruption and clientelism were among the most often underlined inefficiencies of the Macedonian justice system. During the discussion on the judicial reform, the president of the NGO Transparentnost – Makedonija (Transparency – Macedonia) Zoran Jacev advanced the thesis of a "judicial oligarchy", according to which the judges are entering the political and economic deals with the political and business elite. At the same time, due to the lack of political will, resistance from within the judiciary and lack of material resources, the reforms have been delayed until the strong external pressure did not succeed in bringing the issue onto the agenda.

After proclaiming its independence, Macedonia proceeded with the state and institution building process, judiciary included. The 1991 constitution, 1992 Law on the Republic Judicial Council and Law on Public Prosecutor and the 1995 Law on Courts represented the legal framework under which the Macedonian judiciary was functioning until the recent reforms. The unbearable situation in the Macedonian judiciary we depicted in the previous paragraph has been mainly blamed on the inadequate solutions embedded in these documents.

The 1991 constitution gave the basis for the establishment of an independent judicial system as a third branch of power. The judicial independence and political neutrality have been underlined as a principle upon which the judiciary shall be based (article 98), and the constitution offered some basic guarantees to the judge's position in order to subtract them from the political pressures (like the unlimited mandate and the security of position). However, at the same time the judicial bodies designed by the constitution and the procedure for the election of judges failed to grant practical application of such principle. Thus, similarly to what we saw in Serbia, the constitution (and consequentially the Law on the Republic Judicial Council) made the procedure of appointment as well as of career advancement of judges strongly dependent on the legislative body. The assembly elects the seven members of the judicial council which are responsible for proposing the judges for appointment to the

assembly, according to criteria that are not well specified. The assembly's influence over the members of the RJC have been underlined and criticized in different reports of the international actors, where the main criticism concerned the politicization of the RJC members that give their loyalty to the party that have elected them to the council[283]. The exclusive powers of the RCJ and the assembly in the nomination and dismissal of judges in the situation where the official code of ethics is lacking and no clear criteria for assessing the judge's performance are settled, were used to exercise pressure over the judges[284]. The lack of discipline and the cases of corruption were covered and not investigated, in exchange for the sentences favored by the political elite.

Another shortcoming in the system designed by the legislative framework settled in the first years of transition concerned the complete lack of financial independence of the judiciary. Thus the Ministry of Justice (MoJ) designs the budget for the judiciary, and submits the amount to the ministry of finance who then has the power to change the amount requested before the bill goes to the legislature. This way the judiciary is left with almost no possibility to influence the amount and distribution of the resources it receives. As the transfer of resources is not direct, passing through the ministry of justice, a further source of influence is given to the MoJ, which can obstruct the transfers to the courts. The control both over the amount to be assigned to the judiciary and over the resources to be transferred to the courts gave the ministry of justice the possibility to pressure any single court in the country. An effort to increase the judiciary revenues was made in 1997, when the government agreed to return to the courts half of the collected revenues from court fees, auctions and confiscated objects, but this decision has never been enforced.

The fiscal austerity of Macedonian courts and the persistent under-funding of the judiciary resulted in a situation in which the courts reported €1.4 millions[285] of accumulated debts for electricity, water supply and basic spending, putting the presidents of the courts under continuous management pressure in order to ensure the minimal functioning of the courts. The financial austerity made them vulnerable to financial pressures, both from the ministry of justice and from any other source of material gain. A good illustration of the pitiful financial situation of the courts, and of its implications, is the case of the court president who admitted

[283] See for example the ABA-CEELI report on the situation in the judiciary in Macedonia, 2002, where nepotism and political favoritism were underlined as the most serious problems at the RJC.

[284] The RCJ was supposed to exercise control over the judges' work and, when necessary, to proceed with disciplinary measures. However, as the criteria for assessing the judges' work were unclear, the possibility for the abuses of this power opened.

[285] EU report 2006.

trying to influence the decision of a judge in his court, in a case involving a municipal officer who had the authority to approve the building allow a planned court building expansion[286].

A similar situation is found if we pay attention to the salaries of the judges, which remained rather low if compared to the salaries of other officers as well as with the judges' salaries in other Balkan states (according to Utrinski, the highest salary in the judiciary for the president of the high court in 2006 was about 900 Euro, compared with 1.700 in Serbia and 3.500 in Bosnia for the same function). The salaries were almost blocked since 1996, until the adoption of the Law on Salaries, and remained more or less the same even after the law, so widely publicized and praised, actually failed to bring any substantial change in the material status of the judges. The low salaries for the judges are not only a potential cause for corruption in the judiciary, but also are an obstacle for ensuring the quality of the judges, as the salaries are much lower than in the private practice, and as such are not able to attract the most skilled lawyers. Even worse is the financial situation of clerks and administrative staff, whose salaries are even far from being sufficient to ensure their impartiality and good quality of their work. Of no surprise then that some important channels of corruption are passing through the administration and that one of the most criticized features concerned the procedure of the case assignment were bribing the court administration is used to influence the case assignment[287].

The organization of the courts is based upon the 1995 Law on Courts, which dismantled the system of courts inherited from the previous regime and designed the judiciary as a single, monolithic pyramid. The distinction between the criminal court, specialized courts and the misdemeanor courts has been abolished. The courts of first instance (27 of them) are thus dealing with all cases, both administrative and criminal, without the specialization for the particular branches of law. There are also three courts of appeal and the Supreme Court. The constitutional court, according to the constitution, is not part of the judiciary. Such organization of the justice system was, according to the domestic authors, based on the belief that this way the splitting, overlapping and mixing of competences would be avoided and an efficient organization would be created. The decision makers supposed that a single court system without specialization would ensure the organization and functional possibility for rationalization of the inherited potentials of the courts, while the concentration of competences in the courts of first instance was seen as a mark of the quality and

[286] See ABA – CEELi assessment of the judiciary in Macedonia, 2002.
[287] See the ABA-CEELI report on the judiciary in Macedonia, 2002.

rationalization of resources (see Janevski and Zoroska – Kamilovska, 2005). However, only a decade later, the same model was blamed of inefficiency and blocking the court's work. An inadequate organization of courts created a situation in which some courts were overburdened, with resources (technical, material, human) insufficient to cope with the number of cases under their jurisdiction, whereas in smaller courts the number of cases was far below their capacities. The lack of distinction between civil, administrative and criminal cases actually created a situation where the courts are overburdened with a large amount of execution and "misdemeanors" cases blocking the work of the courts[288]. Beside the inadequate organization of courts, other identified causes of backlog were the complicated procedures and the deficiencies in the system of summons delivery.

In the period immediately after the 2001 violence, the reform of the judiciary, even though often mentioned, was not undertaken in a comprehensive, strategic manner. Some changes were introduced, most importantly through the constitutional reform that followed the Ohrid Framework Agreement (OFA) and through the 2003 amendments to the Law on the Republic Judicial Council and the Law on Courts in order to allow the OFA implementation. The composition of the judicial council was changed in order to ensure the veto power to the members of the ethnic Albanians by prescribing the Badinter majority[289] for the election of the 3 members of RJC[290]. The same principle of qualified majority was introduced in the Article 109 of the constitution for the appointment of the justices of the Constitutional Court and the Law on Courts was amended in order to ensure the equal representation of the national minorities in the judiciary[291].

Another important step in this period is the adoption of the Law on the Budget of the Courts, following the initiative of the Macedonian Judges Association (MJA). Even though the

[288] Thus, of the 730700 cases that were still pending in March 2005, 71% were execution and misdemeanor cases.

[289] The "Badinter majority" is a label used in Macedonia to refer to the particular mechanism introduced as a part of the 2001 Peace Agreement (Ohrid Framework Agreement, OFA). It consists in the double majority where, beside the absolute or 2/3 majority, the majority of the votes belonging to the deputies declaring to belong to ethnic minorities shall be obtained for the decision to be adopted. Its usage, as prescribed by the OFA, is rather large, and due to the imprecise formulations of the OFA it is still subject to different interpretations and a key in the political conflict between the Macedonian majority and ethnic Albanians. It is one of the crucial points of the OFA and the key for understanding the developments in almost all dimensions covered by this study. Please see the sections on the assembly and minority rights.

[290] The XIV amendment to the constitution and the law on RJC.

[291] Equal representation in all state agencies is another core principle of OFA requiring that the state bodies reflect the ethnic composition of the country. This provision was thought and included in OFA as an instrument for the protection of the minorities' rights, as it pushes for positive discrimination and might increase the minorities' loyalty to the state. However, in the case of Macedonia, it was interpreted in a too strict manner, often resulting in sacrificing professionalism for ethnicity. Please see also the part on the civil service reform, police and security sector reforms.

law draft prepared and advocated by the MJA aimed to abolish the above mentioned financial dependence of the judiciary, the document was modified in the assembly so to preserve the executive's influence over the judicial budget through the veto power given to the Minister of Justice. The legislation constituted the new body, the Judiciary Budget Council, with competence to design the budget of the judiciary and the allocation of the resources. Even though the veto powers the executive maintained do not allow the full financial independence of judiciary, the presidents of courts and the judiciary as a whole are given more possibilities to influence their own financial resources.

8.2.2. The Reform

The reform of the judiciary was finally initiated in 2004 with the adoption of the strategy for the judicial system reform. The impetus for the reform mainly derived from the external pressures that can be traced back to the reports issued by different international organizations engaged in democracy promotion and monitoring. The reports of the EU, World Bank, Council of Europe, and NATO all identified the lack of the reform of the judiciary as the main obstacle to the full democratization in the country[292] and these criticisms echoed in the domestic opinion and media, creating an internal push for the reform. The judiciary reform was one of the most important recommendations the EU commission continuously underlined, and the domestic stakeholders were avoiding the question for as long as possible. After years of neglecting the question, in 2004, the year of the Macedonian application for the membership to the EU, the judiciary reform had to be urgently faced in the hope of a positive answer from Brussels. The strategy for judicial reform adopted in November 2004 envisaged a number of changes to the legal framework aiming to enhance the efficiency and quality of the judicial system. The training, appointment and the career advancement procedures were to be brought in line with the international standards by the introduction of structural changes in the composition, selection and spectrum of competences of the Judicial Council and by the introduction of the state-financed academy for training the judiciary staff. The courts organization and the procedures were also to be changed in order to increase the efficiency of administration of justice. The envisaged reform was supposed to tackle two most important questions: the independence (politicization) and the efficiency of the judiciary.

[292] EU SAA 2003/2004 reports, World Bank report on the Judiciary system in countries in transition, NATO recommendations for membership. See also Gaber – Damjanoska and Jovevska, 2004.

The reform began with the constitutional reform, a solution that made some fears about the real intention of the decision makers to reform emerge, due to the possibility (in some moments threatening to become reality) that the reform could be blocked by the political appetites of smaller political parties holding the veto power in the constitutional reform. Fortunately, the political leaders finally succeeded in reaching the agreement that the reform shall concern only the judiciary, leaving all other issues aside (see Gaber – Damjanovska and Jovevska, 2005). The debate in this period saw the key political actors mainly interested in the procedures of appointment and composition of the Judicial Council, whereas the members of the judiciary were trying to avoid the probing term proposed. They opposed to the passage of the authority of misdemeanors to administrative organs, underlined the necessity for improving their financial situation and required the 2/3 majority for the election of the prosecutor and appointment of judges by arguing that the simple majority represents a source of the party's influence.

The difficult negotiations resulted in the political parties finally achieving the necessary agreement and passing the necessary constitutional amendments in December 2005. A 2/3 majority was agreed for laws on the judiciary and the public prosecution, while the election of the members of the council of judges and council of prosecutors required simple Badinter majority (meaning the veto power to the minorities, but not necessarily the political consensus of all parties in the election of judges).

The reform thus went on in 2006, when it overlapped with the ongoing electoral campaign, meaning that the changes in the judiciary were to be pursued and used as part of the electoral campaign. In practical terms, this meant the speeding up of the reforms in order for the bills to be passed before June. The new Law on Courts, Law on Judicial Council and Law on the Academy for Training of Judges were adopted. The hasty procedure, particularly in the last phase, caused the malcontent of the judiciary as the reform was mainly drafted by the Ministry of Justice and influenced by the political parties instead of incorporating the suggestions, requests and needs of the judiciary.

The legislative framework put in place is considered to be in line with the international standards. As far as the organization of courts is concerned, the most important novelties concerned the establishment of the fourth court of appeal, administrative court and special court departments in five basic courts to deal with cases of organized crime. The Judicial Council was also reformed in order to increase its independence. Out of fifteen members of

JC, only five were to be elected by a procedure that implies the influence of the legislative, eight are elected by the judges and the remaining two are the president of the Supreme Court and the Minister of Justices.

The Law on the Academy for the Training of Judges was also adopted, finally allowing appropriate initial and continuous training of the staff (until that moment the training was organized by the Macedonian association of Judges through the Centre for Continuing Education of Judges). The academy is supposed to allow the merit-based recruitment and to increase the quality of the judiciary as the Judicial Council can propose the candidates for the judge only from the list of the candidates provided by the academy. The academy's bodies are designed so to ensure their independence from other branches of power.

The changes were also introduced in the Law on Litigation Procedures, while the adoption of the new Law on Administrative Disputes, the Law on Mediation, the Law on Misdemeanour and the Law of Enforcement aimed to increase the efficiency of the system.

The reforms continued in 2007, when the new Law on the Public Prosecutor was adopted, after a delay that raised criticisms from the opposition parties and accusations that the government is not willing to give away its control over the prosecutor office (Gaber – Damjanovska and Jovevska, 2007). The substantial differences between the government and opposition over the question of the duration of the mandate and, more importantly, the continuity/discontinuity with the existing prosecution system, blocked the reform for almost a year[293]. Finally the law was adopted in December 2007, the opposition and prosecutors succeeding in ensuring the unlimited mandate for the office whose appointment was subtracted by the assembly and given to the independent body of the Prosecutors' Council. The government succeeded to maintain the control over the Public Prosecutor of Macedonia, to be re-appointed by the assembly for the mandate of six years. The Law on Salary of Judges was also adopted in 2007 in order to introduce the system of salaries of judges able to protect the judges from pressures and influences, strengthening their independence and impartiality. According to the legislation, the salary is based on the impartial criteria including the type of court and the type of cases the judge is handling, his position, the duration of tenure, the knowledge and specializations as well as the results achieved (art. 4 Law on Salary of Judges). The salaries are calculated on the basis of the average salary in the country for the previous year, which is then multiplied by a coefficient which varies from 2.8 to 3.7. However, while

[293] The key question, beside the limited mandate proposed by ruling VMRO, was the conflict over whether all prosecutors shall be re-elected, or the already appointed prosecutors shall automatically keep their mandate.

the law was claimed to solve the problem of the inadequate financial treatment of the judges, the financial status of the judges remained substantially unchanged as the calculation of salaries remained the same, with the same coefficients settled by the previous legislation (Law on Salary of the Deputies and other Elected and Appointed Officials 11/91, 38/91, 23/97, 37/2005, 84/2005). As it was the case with all other laws in the field, the Law on Salary of Judges was drafted by the ministry of justice, without consulting the judiciary and it was strongly criticized by the members of the judiciary for maintaining the existing status quo where the salaries do not reflect the responsibility of the judges and are far from being stimulative (Utrinski, 2007).

With the adoption of the Law on Public Prosecutor Office and Law on Council of Public Prosecutors in December 2007, the legislative framework necessary to settle the judiciary as an independent branch of power was put in place. However, on the side of the implementation of the adopted reformist laws, the situation was far from changed. According to the EU commission reports, the deficiencies persisted (particularly the party influence, and political pressures) while the implementation was hampered and delayed respect to the government's strategy.

8.2.3. Hampered Implementation

The implementation of the reforms was seriously delayed by the failure of the assembly to appoint 5 members to the Judicial Council, which made it very difficult to obtain the 2/3 majority necessary for the decision making in the Council. The delay was mainly caused by the decision of the major Albanian party DUI to block the assembly's work as a reaction for being called to enter the government composed of VMRO and the smaller Albanian party DPA. The institutional crisis was further aggravated by the cohabitation between the president coming from the opposition SDSM and the hostile majority in the assembly, making the appointment of the 2 members on presidential proposal difficult to ensure. The failure to appoint the members of the council caused a delay in appointing the judges of the newly founded courts (administrative court and fourth Court of Appeal in Gostivar) as well as in starting the work of the Academy for the training of judges. The delays were finally surmounted in the second half of 2007, after DUI re-entered the assembly. The compromise was finally found and the 4 members of the council were appointed, making the work of the council easier, particularly in the domain of the appointment of judges.

According to the media and the statements of domestic experts, the politicization and pressures are still present, only now combined with nepotism and personal links as criteria for appointing the judges[294]. The appointment of 46 judges in the courts of first instance and courts of appeal undertaken in February 2008 was strongly criticized in public, as the newly appointed judges were connected with family links with the high state officers and members of the government. The impartiality in the appointment of the judges in the administrative and in the newly formed court of appeal are also questionable, as some of the judges elected lack the minimal professional requirements and have never before exercised a similar duty (Duvljak, February, 2008, Utrinski). The exponents of the judiciary identified the main cause of such situation in the creation of a too-powerful Judicial Council without the establishment of any mechanisms for inner control. In an interview for Utrinski, the president of the Supreme Court and member of the Council argued that the new Law on the Judicial Council created "a monster that is threatening to destroy the whole judicial system". He underlined that the presidents of courts often initiate the procedure for removal against those candidates elected by the Council due to their incapability to exercise their function and failure of the council to appointing the candidates through professional criteria (from Duvljak, 2008). The lack of accountability mechanisms brings to three paradoxical situations where the highest judicial body is actually breaking the law. An illustration of such practice was the decision of the Council to reconfirm and prolong the mandate of its president Iseni, thus breaking the Law on Retirements, according to which Iseni was supposed to retire and a new president of the council was to be elected. While the council was given, and started to exercise, the right to investigate the cases of abuse of power, inefficiency and unprofessionalism and to undertake disciplinary measures against judges, the Helsinki committee accused the council of using double standards. They pointed out that the council refused to investigate the work of the judges for the irregularities appointed by citizens, which, according to the Helsinki committee, shows the council's tendency to protect the corrupted judges and to take disciplinary actions selectively. As the Venice Commission commentators have underlined in their opinion on the draft of the constitutional amendments concerning the judiciary in Macedonia, the Judicial Council is designed as a closed body where no mechanism of control other than internal are envisaged. It was also given too large powers, too large immunity for its members, too much influence and non-external control, making the council a kind of "super – body" (see for

[294] Interview with Jovanovski, Taseva, Hristova.

example the comments of Suchocka to the draft of the constitutional amendments, 2005, and the comments of Mazak to the same amendments, 2005). As we saw, the solution adopted did not follow the concerns expressed by the Venice Commission which resulted in the establishment of a "super-body" that answers only to itself. According to some domestic authors, this solution, that established the judicial council as a "super-institution", might bring to a situation where the centre of the corruption and (political) influence over the judiciary is moved from the government to the judicial council (Laboviḱ, 2006, 361 – 362). As Anderson and Grey underlined, "the most pressing issue in many transition countries is to ensure judicial accountability, given newfound independence" (Anderson and Grey, 2007, p. 333), and in the case of Macedonia the failure to ensure the mechanisms of accountability of the council can prove to be some serious shortcomings hampering the reform of the judiciary. In order to change the legislative framework and establish the accountability of the judicial council, the very large consensus of the political parties would be needed (as the procedure prescribes the qualitative majority), and as we saw, this is rather difficult to achieve in the case of Macedonia. Furthermore, it would surely cause the resistance of the judicial council that could use its influence over the judiciary to oppose the change. Last but not least, the line between accountability and control is thin and the change would surely raise the problem (both among experts in designing the reform, among the politicians and in public opinion) of defining the mechanisms that could ensure accountability without hampering independence.

The financial independence of the judiciary is still hampered. We saw how the salary of the judges remained unchanged even though the Law on Salary was adopted claiming to ensure adequate compensation for the activity of judges. The ministry of justice kept control on the budget of the judiciary through the veto power of the minister in the council for the budget of judiciary. The ruling majority maintained the possibility to veto the appointment of judges by designing a procedure that requires the 2/3 majority in the council, which – in a situation where 5 out of 15 members are appointed by the assembly and 1 member is the minister of justice – actually makes it impossible for the representatives of the judiciary to over-vote the members appointed by the legislative. The presence of the minister of justice in the Judicial Council, in the Academy for training management board and in the Council of public prosecutors as their full member has also been pointed out by the domestic actors as a source of influence, even though only in the Council for the Judiciary Budget such influence is realistically exercised, through the veto power. As shown in Tab.1, only a slight growth in the

budget of the judiciary was registered in 2004, leaving the judiciary's share in budget more or less stable on about 1.6 – 1.7%. Moreover, the judiciary is almost completely financed by the main central budget, having only about 5% of the incomes deriving from their own resources. All these issues represent the points testifying the persistence of the often criticized political control over the judiciary. "Unlike the case of Serbia, in Macedonia we do have a nominally independent judiciary. Yet, the outcome is the same, only the way differs. The nominal independency is hampered by the political control through the minister's control of the budget and through the veto-powers and unofficial pressure he exercises" (from the interview with Jovanovski, director of the office of the Information Office of the Council of Europe in Skopje, August 2008). The most recent developments – when the mayor of Struga, member of the oppositional SDSM, was arrested for corruption and then, before the trial, amnestied by his party fellow who had the position of the president – show the lack of political will and maturity which are necessary for establishing the rule of law. By accusing the government for politically orchestrated arrests, the President of the Republic granted the amnesty to the man whose guilt was still to be proved, in order to save him from what he is sure would be a politically biased trial.

8.2.4. The Role of the International Actors

The reform of the judiciary in Macedonia is a process initiated by the country's intention to apply for the EU membership. The role of the international actor in pushing the issue onto the agenda, by offering legal, technical and material support, appeared thus decisive.

As we saw, after the establishment of the judiciary system in the first half of the Nineties, the changes in the legislative framework were sporadic, small changes being introduced through the amendments of the existing legislation in order to ad-hoc face the most striking problems. The politicization, the lack of professional standards in the appointment and career development and inefficiency remained endemic features of the Macedonian judiciary, identified by the World Bank as the most serious obstacle to democratization and continuously criticized by the different international actors in their reports on the developments in the country. The European Union, since the first SAA reports, included the improvement of the functioning of the judiciary and its de-politicization as urgent steps to be taken. The pressure became more articulated with the EU partnership, where among the short term priorities we can find the call to prepare a comprehensive reform of the judiciary, with particular accent put on the mechanisms to ensure political independence of judges and

prosecutors and the establishment of the merit-based criteria for the career. A set of actions necessary to simplify the court procedures was also required, as well as the strengthening of the institutional capacity of training the judicial staff.

The 2006 access partnership priorities underlined the necessity to settle the legislative framework (amendments of the constitution and the adoption of the necessary legislations regulating the system of selection, career for judges and prosecutors and strengthening of the training system), and called for the implementation of the strategy and action plan on the judicial reform adopted. The accent was also put on the necessity to reduce the cumulated backlog. The successful settling of the legislative framework is reflected in the 2007 and 2008 commissionary reports and access partnerships. In these documents the priorities concerning the judiciary call for the implementation of the adopted legislation, requiring that the government establish a sustained track record on the implementation of judiciary reforms, and strengthen the independence and overall capacity of the judicial system (see Tab.6).

The EU also gave a substantial financial support to the reform through the PHARE and CARDS programs (€11.2mil for the judicial system, see Tab.2), while the USA organizations financed the training of judges and judicial staff.

8.2.5. Assessment of the Reform

The reform of the judiciary in Macedonia proved to be one of those cases where the international actor's action has been crucial for pushing the issue onto the agenda. After a long period of stagnation and delay in the reform[295], the decisive action of the international actors brought the issue onto the agenda. The time factor seems to matter, as the negative assessments and criticisms towards the judiciary came in a period when the Macedonian government was planning to apply for the candidate status. As Schimmelfennig and Sedelmeir (2004) underlined, the size of the reward, the time perspective and the speed of reward (immediate or late?) significantly influence the probability of the compliance to the norm promoted. The application for the candidate status (beginning of 2005) and the desire to start with the negotiations, especially when combined with the strong social pressure exercised through the criticisms of the judiciary, pushed the reforms forward.

[295] The lack of comprehensive reform we registered can be explained in line with Anderson and Grey as a consequence of an agenda "overbooked" with more important political and economic issues a transition country faces in the first years after transition. According to the two, judiciary reforms are pushed successfully onto the agenda only with the increase of the demand for the judicial service that comes with the economic liberalization.

On the domestic level, the lack of strong institutional change agents among the ruling elite appears at least partially compensated by the favourable political moment. Indeed, the election scheduled for mid-2006 created a situation in which the EU integration and the successful reform of the judiciary were the cards to be played by the government in the coming elections. But this situation, while contributed to make rule adoption easier (even under the difficult condition of reaching the large consensus, so difficult in Macedonia), at the same time made reform hastily, not allowing for more detailed evaluations and analysis. We can question in which measure the registered failure to ensure the judicial council accountability is a product of the "hasty" solutions that, rather than with the problem solving, is a combination of international pressures and electoral campaign.

As far as the rule implementation is concerned, here again we account for continuous strong external pressures. The refusal of Brussels to open the negotiations with Macedonia settled the new goal to achieve, and the full implementation of the judicial reform is one of the conditions Macedonia shall satisfy in order to see its candidate status reach full significance. The delay and difficult implementation can be explained by the rather negative conditions on the domestic level, the continuous financial pressures combined with the instable political situation and continuous conflict between the ethnic and political parties hampering the process. However, even though slowly and with serious problems, the legislative framework was finally settled in the 2007 and the efforts to implement it have begun.

8.3. A Comparative Assessment

In the previous paragraphs we saw the developments of the judiciary system in our two cases, Serbia and Macedonia. The problems the two countries faced were rather similar, what with politicization, corruption, inefficiency and bad financial situation being the common problems of the two. The most serious challenge in both cases was the executive's (and parties') control over the judiciary, established through the lack of financial independence, through politicization of the Judicial Council and through the role given to the parliamentary majority in appointing the judges, and the consequent politicization of the judicial system. The

political influence is identified in both countries as an element of the state capture mechanism[296] and linked to the corruption in the judiciary[297].

Even though the problems in the functioning of the judiciary in the two cases studied were rather similar, the differences in their reformist paths and in the current situation are important. While in Serbia we register a failure to establish an independent judicial system and blockage of the judiciary reform, in Macedonia the rule adoption phase is completed. The Macedonian legislative framework regulating the functioning of the judiciary undergone significant changes in the last four years and was judged by the international experts to be mainly in line with the European standards, implementation now representing the most difficult challenge to face.

Table 1: "Judiciary reform in Serbia and Macedonia, summary of most important factors and outcome".

	SERBIA		MACEDONIA
	2001	2006-	
Main input for the change	Domestic	Domestic	External
Conditionality with important reward	-	Absent	Strong, present
Presence of the ChA	Present	Present	Irrelevant
Presence of Veto Players	Present	Present	Irrelevant
Conflictuality	High	High	Mid
Stability/fluidity of the political environment	Fluid	Stable	Fluid
Outcome	Rule adopted Never implemented	Rule adopted not in line with international standards Implementation pending	Rule in line with international standards adopted Implementation ongoing, slow

How can we account for the differences in the outcome in the two countries? As we can see in table 1 (for the more detailed tables see the appendix), the first difference seems to be on the supply side. The action of the international actors aiming to promote the judicial reform appears to be much more credible in the case of Macedonia. Starting in 2004, the European Union made rather clear to the Macedonian government that the reform of the judiciary is a necessary condition for granting the candidate status and opening the negotiations.

The fact that the reward (candidate status) was rather near also increased the credibility and efficiency of the conditionality exercised. The credibility of the international actor was also

[296] For Macedonia see Labovik, 2006, for Serbia see Pešić, 2006.
[297] For Macedonia see Labovik, 2005 and 2006, for Serbia Begović, 2005.

strengthened by the fact that access to the CARDS funds was conditioned by the persistence in the reform (see Tab.7 and 10). The vulnerability of the Macedonian political elite to the external influence[298] and criticism, as well as the strong preference of the whole society for European integration, pushed successfully for the compliance in the field, inducing the policy makers to overcome the difficulties and change their calculations of costs and benefits. The success to amend the constitution is one of the clearest examples of how the European agenda can induce the Macedonian policy makers to put their disputes aside and narrow the party interests: in a country where the whole political agenda consists in the integration into the international institutions, no political actor can bear the cost of being the party-breaker. The political fluidity and uncertainty about the exit of the future electoral competition, as well as the large consensus required for the reform – which made including the opposition a necessary condition, represented positive factors for establishing an independent judiciary. In the case of Serbia all these factors were absent: the conditionality exercised by including the judiciary reform among the key questions to be faced was not credible, due to the political relations between Serbia and EU that made the security concerns (state union destiny, Kosovo status, southern Serbia and the rise of the nationalistic forces) prevail over the goal of democracy promotion. Further on, the high conflictuality on the issue that tackled one of the most salient dimensions of the political conflict in Serbia (the problem of facing the past and continuity/discontinuity dilemma with the previous regime) and hampered the mechanisms of the electoral accountability that produced only a peripheral turnover[299], made the domestic asset for establishing the mechanisms of horizontal accountability rather unfavourable[300].

Before closing this chapter, we would like to add a final observation concerning the process of the rule implementation. Both the short history of the Serbian "will-be reform" in 2001 and the Macedonian case share the characteristic of the rule adoption achieved through the change of the costs and benefits balance. In the case of the Serbian effort to reform the judiciary we recognize such asset in the bargaining process, conflictual and caractherized by the parties' short term stratgies, that brought to the adoption of the Law on Court, Law on High Judicial Council and Law on Judges in 2001. The dissatisfaction and the disapproval of

[298] The vulnerability of the Macedonian political elite to the external influence (EU and NATO in particular) is one of the most important characteristics of the Macedonian politics that we will meet in other fields as well. Very often the international actors have pushed the issues onto the agenda, exercised significant pressures over the domestic stake holders or played the mediator role. It was reported by the domestic analysts as the key factor in understanding the domestic developments, as well as the main instrument the domestic politicians use (interviews with Hristova and Taseva, august 2008).

[299] On the concept of peripheral turnover see Sartori, 1972.

[300] On the links between horizontal and electoral accountability see Morlino, 2006.

the key stake holders for the law[301] resulted in a failure to implement the law. In the case of Macedonia, we assisted to a rule adoption that was mainly guided by strong, credible international conditionality. As we underlined in the theoretic part of this work, the reforms pursued by counting on the logic of the convenience without changing the actors' preferences results in what we labelled "controversial" compliance. In such asset the actors do not change their beliefs or preferences but only the calculation of the costs and benefits. As a result, the compliance with the norm (if achieved) is again subject to the further costs and benefits calculations, instead of being guided by the rule internalization (which can, however, take place after some time). The controversy of such compliance lays in the persistence of the original preferences that can re-emerge, as soon as the structure of costs and benefits change. This was the case of Serbia in 2002, and might become the potential source hampering the rule implementation in Macedonia (we already saw some difficulties in the rule implementation). In line with Morlino and Magen's hypothesis, we can argue that an evident lack of rule internalization is one of the main causes for the difficulties Macedonia meets in implementing the judicial reform. In such asset, the influence of the external actor remains the key for pushing the process forward, ensuring that the costs and benefits calculations of the key actors grant the implementation of the newly adopted rules.

[301] The members of the government were not present in the assembly during the voting.

APPENDIX

Table 1: "Budget of the Judiciary, Serbia".

(in thousands of dinars).

Year	Budget judiciary, resources from the state budget	Budget judiciary (all resources)	State budget	Share of judiciary in the state budget	Share of state finances in the judiciary's total finances
2002	3793374	4893374	217379629	1.745%	77.5%
2003	7056778	9099112	318691919	2.214%	77.5%
2004	7151705	9660522	362045252	1.975%	74%
2005	7733697	10849669	429764926	1.799%	71.3%
2006	10533775	13568436	548405821	1.921%	77.6%
2007	16214213	20933154	646466666	2.508%	77.5%
2008	18092827	22586724	611866850	2.95%	80.10%

(Source of data: Law on State Budget 2002. 2003, 2004, 2005, 2006, 2007, 2008, Sluzbeni List Reublike Srbije).

Table 2: "Budget of the judiciary, Macedonia".

(in thousands of denars).

Year	Budget judiciary, resources from the state budget)	Budget judiciary (all resources with rebalance)	State budget	Share of judiciary in the state budget	Share of state finances in the judiciary's total finances
2002	901.394	-	71.700.273	1.257%	-
2003	1.012.532	-	67.490.170	1.500%	-
2004	1.150.641	1.219.365	66.666.000	1.726%	94.36%
2005	1.171.457	1.235175	66.538.469	1.760%	94.84%
2006	1.291.673	1.292.061	81.749.000	1.458%	94.96%
2007	1.283.176	1.347.376	79.522.497	1.614%	95.24%
2008	1.518.736	1.595.688	89.397.520	1.699%	95.18%

(Source of data: Law on State Budget 2002. 2003, 2004, 2005, 2006, 2007, 2008, Sluzbeni Vesnik na Republika Makedonija).

Table 3: "The efficiency of Serbian courts, statistics of the cases submitted and solved".

Year	Number of cases in procedure	Number of cases submitted in the year	Number of solved cases	Percentage of solved cases	Solved cases/new cases (percentage)
2002	1.551.789	1.096.323	1.099.972	70.9 %	100.33%
2003	1.626.794	1.174.977	1.118.798	68.7 %	95.22%
2004	1.704.616	1.559.566	1.098.063	64.4 %	70.41%
2005	1.923.550	1.270.441	1.257.991	65.3 %	99.02%
2006	2.309.704	1.610.659	1.611.215	69.7 %	100.03%
2007	2.251.081	1.579.522	1.552.505	68.97%	98.29%

(source: the Serbian High Court annual reports 2002, 2003, 2004, 2005, 2006, 2007).

Table 4: "The efficiency of Macedonian courts, statistics of the cases submitted and solved".

Year	Number of cases in procedure	Number of cases submitted in the year	Number of solved cases	Percentage of solved cases	Solved cases/new cases (percentage)
2000	1053505	589506	538751	51.14%	91.39%
2001	1062475	547334	520284	48.97%	95.06%
2002	1049219	507027	616155	58.72%	121.52%
2003	1193383	760319	689226	57.75%	90.65%
2004	1391853	887226	716608	51.49%	80.77%
2005	1664429	988720	816869	49.09%	82.62%
2006	1724981	875855	870127	50.44%	99.35%
2007	1967009	956686	794140	40.37%	83.00%

(source: The data for the period 200-2005 are from "Explanation following the proposal of the Law on Courts in Macedonian assembly, April 2006", available at www.sobranie.mk/uploads/dokumenti/Obrazlozenie,%20sudovi%2011.4.2006.doc, For 2006 and 2007 the data are from the Annual report on the functioning of judiciary, issued by The Macedonian High Court 2006, 2007).

Table 5: "EU priorities in the field of the judiciary reform in Serbia" .

2002 SAA report priorities	Reform of the judiciary and prosecutorial systems should continue, with particular attention to independence, criteria for appointments, training, procedures, and reduced opportunities for political interference. Budgetary provisions for the new system of judges' salaries should be introduced rapidly. Steps should be taken to improve the enforcement of the court judgments. Action should be taken on corrupt elements within the state system.
2003 SAA report priorities	Continue the reform of the judicial and prosecutorial systems, with particular attention to independence, criteria for appointments, increased specialized staffing of courts, training, procedure, reduced opportunities for political interference, budgetary provisions, enforcement of court judgments. Implementation of the Federal Criminal Code and transfer of military courts to civilian.
2004 EU partnership	Short term priorities: modernize and increase efficiency and independence of the court system, in particular its commercial courts; ensure the functional independence of war crime prosecutors. Prepare for the setting-up of administrative and appellate jurisdictions.
2006 EU partnership	**Key short-term priorities**: pursue with determination the reform of the judiciary to guarantee its independence, professionalism and efficiency, in particular review the system of recruitment and career to be based on technical and professional criteria, avoiding political influence, and secure permanent tenure of judicial posts. **Short term priorities**: Adopt and implement legislation on mandatory initial and continuous training for judges, prosecutors and court support staff, and strengthen the training centers, start rationalizing the court system and modernize proceedings, in particular in the field of commercial law. Strengthen the autonomy of the prosecution system, particularly the offices of the prosecutors for organized crime. Strengthen the office of the prosecutor for war crimes. Establish administrative and appellate courts.
2007 EU partnership	**Key priorities:** Improve the functioning of the judiciary, guarantee its independence, professionalism and ensure that the career development and recruitment of judges and prosecutors are based on technical and professional criteria and free of political influence. **Short-term priorities:** Ensure the full independence of the courts and prosecution system and strengthen the office of the prosecutor for war crimes Implement the action plan on the judicial reform strategy. Adopt and implement legislation on mandatory initial and continuous training for judges, prosecutors and court support staff, and strengthen the training centers. Rationalize the court system, modernize proceedings, introduce an effective court management system and establish administrative and appellate courts. Create an IT network for prosecutors at all levels, ensure enforcement of court decisions and further strengthen the capacity to try war crimes domestically in full compliance with international obligations to the ICTY. Strengthen the office of the prosecutor for war crimes.
2008 EU partnership with Serbia	**Key short-term priorities**: Improve the functioning of the judiciary, guarantee its independence, accountability, professionalism and efficiency and ensure that the career development and recruitment of judges and prosecutors are based on technical and professional criteria and free from political influence. Ensure proper functioning of the Constitutional Court. **Short-term priorities**: Ensure the full independence of the courts and prosecution system. Strengthen the office of the prosecutor for war crimes. Implement the action plan on the judicial reform strategy. Adopt and implement legislation on mandatory initial and continuous training for judges, prosecutors and court support staff and strengthen the training centers. Rationalize the court system, modernize proceedings, introduce an effective court management system and establish administrative and appellate courts. Create an IT network for prosecutors at all levels, ensure enforcement of court decisions and further strengthen the capacity to try war crimes domestically in full compliance with international obligations to the ICTY.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia, my elaboration.

Table 6: "EU priorities in the field of the judiciary reform in Macedonia".

2002 SAA report priorities	Improve the functioning and efficiency of the judiciary, in line with international standards. Strengthen training of judges and prosecutors on EU legislation. Limit politicization of the judicial system as a part of a strategy of development and reform and introduce objective professional standards for appointment and career development.
2003 SAA report priorities	Improve the functioning and efficiency of law enforcement agencies and of the judiciary, in line with international standards. Strengthen training of judges and prosecutors on EU legislation. Limit politicization of the judicial system as a part of reforms aimed at developing judicial capacity and ensure that objective professional standards for appointment and career development are fully complied with.
2004 EU partnership	Strengthen the judicial system - Prepare a comprehensive reform of the Judiciary. Review the current system of selection, appointment and promotion of judges and prosecutors with a view to ensuring political independence, irrevocability of judges and career development based upon merit. Prepare necessary constitutional and legislative amendments to guarantee the independence of the body in charge of their selection and career development. Simplify court procedures. Improve the enforcement of the courts' decisions. Introduce alternative dispute resolution mechanisms including arbitration and mediation in criminal matters. Ensure the appropriate enforcement of property rights and court rulings in the area of civil law. Strengthen the institutional capacity to train judges and prosecutors and prepare the setting up of a national school for magistrates. Provide for adequate initial and vocational training schemes.
2006 EU access partnership	**Key short-term priorities**: Adopt the constitutional amendments needed to implement the reform of the judicial system, in line with the recommendations of the Venice Commission. Subsequently adopt and implement the measures needed to strengthen the independence of judges (notably by reforming the judicial council and their system of selection), strengthen the training system for judges and prosecutors, improve the caseload management, and reduce the backlog. **Short-term priorities:** Ensure a timely implementation of the strategy and action plan on judicial reform with a view to strengthening its independence, improving the efficiency of the courts, and strengthening the overall capacity of the judicial system. Improve the execution of civil cases, and put in place an effective delivery and summons system.
2007 Access partnership	**Key short-term priorities**: Establish a sustained track record on implementation of judiciary reforms and strengthen the independence and overall capacity of the judicial system. Complete the reform of the prosecution and finalize the appointment of the Judicial Council. **Short-term priorities**: Further develop initial and continuous training in the academy for judges and prosecutors. Complete the setting-up of the new court structures and allocate appropriate resources to ensure that they are fully operational and enhance their efficiency. Ensure proper and full execution of court rulings.
2008 Access partnership 2008	**Key short-term priorities:** Establish a sustained track record on implementation of judiciary reforms and strengthen the independence and overall capacity of the judicial system. Implement the reform of the prosecution and finalize the appointment of the Judicial Council. **Short-term priorities:** Further develop initial and continuous training in the academy for judges and prosecutors. Complete the setting-up of the new court structures and allocate appropriate resources to ensure that they are fully operational and enhance their efficiency. Ensure proper and full execution of court rulings.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia, my elaboration.

Table 7: "EU financial support for the judiciary in Macedonia".

Year	Sum	Programs	
2000	(phare) €2mil	Development of the administrative and processing capacity of the courts and prosecutors.	
2001	€1.4mil	Technical assistance to carry out an assessment of the enforcement system. Professional selection and training of the judiciary. Equipment supply to public prosecutors Office.	
2002	/	/	
2003	€2.54mil	Development of the administrative and processing capacity of the courts and prosecutors.	
2004	€1.5mil	Professional selection and training of judges.	
2005	€1.5mil	Support to Public Prosecutor's office.	Conditioned: There needs to be a continued clear signal from the Government that the new Laws on Criminal Procedures and Public Prosecution will be fully implemented as an integral part of its own Judicial Reform Strategy. If this commitment is not forthcoming, the project as designed cannot proceed. Furthermore, the Government needs to formally adopt the Judicial Reform Strategy, which again is a key conditionality for the project to proceed.[302]
2006	€2.25mil	Reform of the judiciary system.	Conditioned: It is essential that political will and momentum be maintained for the Judicial Reform process. Without full support to this strategic direction, specific tactical interventions will yield insufficient sustainable benefit.[303]
2007	€1.1 mil (IPE)	Support to Judicial Reform.	Conditions: general conditions for the program implementation. The Ministry of Justice will carry on the judicial reform process and will make sure that all the framework conditions, including the Strategy for Information-communication technology (SICT) and the Integrated Court Management System (ICMS) for the setting up and effective functioning of the Administrative Court are fulfilled. The implementation of the reform should lead to the legal and institutional changes that are going to regulate the tasks and jurisdiction of the Administrative Court, to define the basic provisions on the structure and the internal organization of the Administrative Court.
Total 2000-2006		10.79 mil eur	

Source: European Agency for reconstruction report 2006, IPE documents 2007.

[302] Source: Project Fiche 3.2.1.1 to action program 2005 for the former Yugoslav republic of Macedonia, European Agency for Reconstruction.

[303] Source: Sector Fiche 1.1. to action program 2006 for the former Yugoslav republic of Macedonia, European Agency for Reconstruction.

Table 8: "EU financial support for the judiciary in Serbia".

Year	Sum	Goal of the programs.	Conditions.
2002	3.5 millions	IT support to Judiciary.	
2003\	13 millions[304]	Training for prosecution office and expert support for the ministry of justice with the aim to define the reform strategy, introduce alternative conflict resolution mechanisms.	
2004	12.5	Twinning project to engage the capacity of the ministry of justice; Support the Judicial training center; Help introduce the alternative dispute resolution mechanisms; IT training and Legal Data Base project.	
2005	3.8	Supply of IT equipment for the ministry of Justice. Fight against economic crime in the republic of Serbia by strengthening Judicial and police capacities to tackle economic crime.	
2006	2 mil	Support to the commission of the high judicial council.	Conditioned: Funding of all proposed programmers is conditional upon the signing of an Implementation Agreement with the main project partners clearly outlining roles and responsibilities. Each of the project partners will be required to implement the necessary institutional arrangements ensuring a smooth implementation of the proposed projects. Outstanding issues, particularly support to the computerization of the court system under the 2004 program, should be addressed before program support begins.
2007	5 millions	Improvement of the efficiency and transparency of the judiciary system Standardized system for judiciary education and training.	Conditioned: (The general conditionality envisaged in order to guarantee the implementation of the programs). The Ministry of Justice will ensure that its order that SENA case management software must be used in all courts of general jurisdiction that have fulfilled the technical requirements for its implementation is duly implemented. The Ministry of Justice will ensure that all stakeholders and beneficiaries of the project are in favour of normative, organizational and changes in the management of the courts and recommendations to the judiciary for improving the everyday practice of the judicial system and reducing the number of unsolved cases.
Total 2002-2006		39.8 mil eur (of which €13mil shared with law enforcement agencies).	

Source: European Agency for reconstruction report 2006, IPE documents 2007.

[304] To be shared with law enforcement agencies

Table 9: "The comparison between the Macedonian and Serbian judicial system" (author's elaboration).

	Mak	Ser
Court system administrated by:	HCJ.	HCJ.
The majority of the members of HCJ are elected by:	The judiciary.	Simple majority in the national assembly.
Appointment, dismissal etc of judges by:	HCJ.	First appointment assembly on HCJ proposal Re-appointment HCJ.
Security of tenure?	Yes.	Yes.
Probation period?	No.	Yes.
Judicial Budget decided by:	Court Budget Council (minister of justice keeping veto power).	Minister of justice.
The Judiciary share in state budget[1]:	1.57% (average 2002 – 2008).	2.16% (average 2002 – 2008).
Percentage of the judiciary budget deriving from own resources[1]:	5% (average 2004-2008).	23.5% (average 2002-2008).
Salaries:	Calculated on the basis of the average salary.	Calculated on the basis of the salaries in administration.
Number of judges:[1]	630	2418
Number of staff (not including judges)[2]:	2793	18171
Percentage of cases solved[2]:	51.31 (average 2002-2007)	68.33 (average 2002-2007)
Number of cases in procedure[2]:	1391853	1704616
Number of cases solved per year[2]:	716608	1098063
Number of cases per judge[2]:	2209	645
Number of cases solved per judge[2]:	1137	454
EU assistance to judiciary:	€11.19mil (2000-2006)	€25.8mil (plus 13 to share with other enforcement agencies) (2002 – 2006).
Legislative framework concerning judiciary considered in line with European standards?	Yes.	No.
Rule adoption of the EU promoted norms:	Mainly concluded.	Still pending.
Implementation of the EU promoted norms:	Still pending.	-
The most serious concern remaining:	Lack of accountability of HCJ.	Executive control – partisan influence on the judiciary.

[1]Data from European Commission for the Efficiency of Justice, European judicial system, edition 2006.
[2]Data for Macedonia based on the Reports of the Constitutional Court of Macedonia, data for Serbia based on the Reports of the Constitutional Court of Serbia.

Table 10: "The explanatory factors for the judicial reform in Macedonia 2004 -, international level" (author's elaboration).

Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	Yes.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	Yes.
Was the issue part of the EU ***key*** short-term priorities?	Yes.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	Yes.
Amount of the EU financial support to the reform in general:	10.79 millions of euro, of 307.9 total EU assistance to Macedonia for 2001-2007 (1).
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	3.5%
Reform perceived by the IA as:	Part of the necessary reforms in transition to democracy.
The main concern guiding IA's intervention in the field:	Democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	-
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.
Were the recommendations made by the IA accepted?	Mainly.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	Yes (2).
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	Yes (3).

Table 11: "The explanatory factors for the judicial reform in Macedonia 2004 -, domestic level" (author's elaboration).

Domestic input for the change:	Weak.
Domestic actors pushing for the reform:	-
Level of conflictuality of the issue:	Mid.
Type of the conflict and main line of the conflict:	Government vs opposition, between different branches of government.
Did the issue concern the deep divisions in society?	No.
Type of the issue (salience - positional):	X
The main beneficiaries of the status quo:	Ruling elite.
The main beneficiaries of the change:	Citizens.
Is the existing status quo strongly delegitimized by all relevant actors?	Yes.
Two or more alternative solutions present?	No.
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.

Table 12: "Judicial reform in Macedonia 2004 -, outcomes" (author's elaboration).

The procedure of law drafting:	Open, discussion.
The main deficiency in the adopted legislation:	Failure to ensure the mechanism of the accountability.
The main beneficiaries of such deficiencies:	Members of the HJC.
The status (2008):	Rule adopted, implementation pending.
The EU comment in the 2008 report:	Good progress in implementing the strategy on judicial reform. However, further strengthening of the judiciary is required as regards its independence, efficiency, human resources and budgetary framework. Moderately advanced.

Table 13: "Explanatory factors for the judicial reform in Serbia (2001; 2002-2003, 2006-), international level" (author's elaboration).

	Serbia 1 Set laws on Judiciary, 2001.	Serbia 2 Amendments on Judiciary 2002-2003.	Serbia 3 Constitution 2006.
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	-	No.	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	No.	No.	No.
Was the issue part of the EU ***key*** short-term priorities?			Yes.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes (issues need attention in following 12 months).	Yes (issues need attention in following 12 months.	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.		
Amount of the EU financial support to the reform in general:	39.8 millions of euro, 2001-2007, of 1290,7 total EU assistance to Serbia in that period (1).		
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	3.08 %		
Reform perceived by the IA as:	Part of the necessary reforms in transition to democracy.		
The main concern guiding IA's intervention in the field:	Democratization.		
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	-		
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.	Yes.
Were the recommendations made by the IA accepted?	Yes.	No.	Only partially.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	-		
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	-		Yes.

Table 14: "Explanatory factors for the judicial reform in Serbia (2001; 2002-2003, 2006-), domestic level" (author's elaboration).

	Serbia 1 Set laws on Judiciary, 2001.	Serbia 2 Amendments on Judiciary 2002-2003.	Serbia 3 Constitution 2006.
Domestic input for the change:	Urgent necessity for the reform of judiciary (1).		Public delegitimization of the judiciary, constitutional reform, constitutional law.
Domestic actors pushing for the reform:	Present (judiciary, civil society, political actors).		Present (judiciary, civil society).
Level of conflictuality of the issue:	High (continuity-dicontinuity).	High (continuity-dicontinuity).	High (continuity-dicontinuity).
Type of the conflict and main line of the conflict:	Between the old and new elite, within the new elite.	Between the old and new elite, within the new elite, between different branches of government.	Between different branches of government.
Did the issue concern the deep divisions in society?	Yes (continuity-discotinuity, new-old elite).	Yes (continuity-discotinuity, new-old elite).	Yes (intra party conflict).
Type of the issue (salience - positional):	Positional.	X	X
The main beneficiaries of the status quo:	Supporters of the ancient regime, corrupted parts in the judiciary.	X	Ruling elite, corrupted parts in the judiciary.
The main beneficiaries of the change:	Citizens.	X	Citizens, judiciary.
Is the existing status quo strongly delegitimized by all relevant actors?	Yes.		
Two or more alternative solutions present?	Yes (presence of two completely different approaches to the way the reform shell be undertaken: continuity-discontinuity).		
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.	Fluid (conflictual, period of stagnation and turbulencies).	Stable.

(1) See for example Koštunica's speech on the conference: "Strategija reformi", 15/09/2001.

Table 15: "The judicial reform in Serbia (2001; 2002-2003, 2006-), outcomes" (author's elaboration).

	Serbia 1. Set laws on Judiciary, 2001.	Serbia 2. Amendments on Judiciary 2002-2003.	Serbia 3. Constitution 2006.
The procedure of law drafting:	Within the party that proposed the law, no public debate, the civil society, representatives of the judiciary, experts and other relevant actors not included (1).	Within ministry, no public debate, the civil society, representatives of the judiciary, experts and other relevant actors not included.	Behind the closed door in intra-party bargaining, no public debate, the civil society, representatives of the judiciary, experts and other relevant actors not included.
The main deficiency in the adopted legislation:	In line with international standards.	Completely undermining the judiciary independence established by the 2001 law.	Parties' control over the HCJ (2).
The main beneficiaries of such deficiencies:		Government (political parties of the ruling coalition)	Government (political parties of the ruling coalition).
The status (2008):	Rule adopted. No implementation.	Rule adopted and implemented, some parts though reversed by the CC.	Rule adopted. Implementation pending.
The EU comment in the 2008 report:			Overall, there has been little progress with the judicial reform process. The legislative framework to implement judicial reform, as provided for by the new Constitution, is still not in place. Considerable efforts still need to be made by Serbia to ensure the independence, accountability and efficiency of the judicial system.

(1) The public debate was undertaken on the draft law proposed by the ministry, not on the law that at the end entered the parliament, proposed by DSS, see the section on the judiciary above.

9. FIGHT AGAINST CORRUPTION AND ORGANIZED CRIME

"But if you do not have the Tao yourself, what use of you spending your time in vain efforts to bring corrupt politicians into the right path?"
Confucius.

Corruption as a phenomenon is said to be as old as the state, well-known and mentioned in the penal codes of various ancient civilizations, from the Jews, Chinese and Aztecs to the Greeks and Romans[305]. Representing the "deviation from the formal duties of a public role" (Nye, 1997, in Kahn, 2004, p. 3), the intentional violation of the principle of impartiality for personal gains[306], and the abuse of public resources for personal gain (definition used by the World Bank), corruption, in all its variants (in the shape of bribery, extortion, cronyism, nepotism, patronage, graft, embezzlement) and in whatever dimension and scope (from petty, administrative corruption to the great political corruption and state capture), directly violates the principles and values upon which democracy resides. "As Pizzorno notes, corruption tends to act upon those conditions of political activity without which democracy is not democracy at all: the principle of transparency… equality of the political rights, equal access to the state… (It) undermines the political control exercised by the citizens…(and) produces inequality of access to the benefits of state actions" (Della Porta and Vannucci, p. 9, 1999). The negative impact the corruption has on the political, economic and social development was widely examined in literature and the fight against corruption became one of the hallmarks of many international actors engaged in the democracy promotion[307].

[305] See Khan, 2004.

[306] Tanzi, 1995, in Begović and Mijatović, 2001.

[307] However, we should underline that corruption was not so condemned in the politological literature during the Sixties as it is nowadays. Hislope stresses: "Finally, we really do not possess definitive information on whether corruption is good or bad for transitional polities. In the 1960s, when modernization, nation-building and development were central topics of investigation in the study of post-colonial states, political scientists generally felt corruption was not such a harmful thing." (Hislope, 2003, pp. 4-5), illustrating the point by the works of Huntington (Political Order in Changing Societies), Bayley, (The Effects of Corruption in a Developing Nation), and Nye (Corruption and Political Development). Le Billon, 2003, also criticizes the position according to which corruption brings only harm: "Such a view of corruption lacks historical and cultural contextualization,

Political corruption, also known as "state capture", a situation when individuals or groups (economic, political, criminal or else) use corruption to capture the state and all its aspects, gaining influence over the decision-making process, over the government, parliament, judiciary and administration, is of particular importance for our two cases[308]. Unlike the administrative corruption, where the existing laws are distorted in the phases of implementation, the state capture concerns the decision-making process. Here again we have the distortion of the very principles of democracy as the decision power is de-facto taken away from the citizens and the citizen's preferences are far from being all given equal consideration. The corruption thus corrupts the established (or at least constitutionally/legally envisaged) democratic mechanisms of allocation of values, bringing to the re-distribution of the power and resources.

Seen the implications the corruption has on the distribution of resources in a specific society, some politological studies approached the phenomenon from the point of view of the realpolitik, coming to the conclusions that, under specific circumstances, some corruptive practices may be crucial factors for the maintenance of the political regime and even for the peace, stability and survival of the state. For example, according to Morlino (1998, 2005), clientelism and patronage politics represent one of the anchors of democracy, allowing the maintenance and a certain level of consolidation of democracy in those assets with limited or low legitimization of the democratic regime. Similarly, Hislope, inspired by Gramsci's thought about corruption/fraud as a strategy residing between consent and force, identifies three mechanisms ensuring the inter-ethnic peace: consensus, control and exchange (corruption), arguing that corruption is a key for understanding not only the inter-ethnic conflict in Macedonia, but also the peace and stability the country experienced during the Nineties. A similar argument is found in Le Billon, 2003, who argues that corruption can not only "fuel the war", but might "buy the peace" as well. According to Le Billon, the effects (positive or negative) of the corruption depend on the type of corruption (the author theorizes the typology based on the "level of stakes of exchange" and the "number of suppliers dispensing corruptive benefits"), and under specific circumstances it can become the only instrument of peace and stability. "In divided societies, a distribution of the spoils of office among different

as the widely diverging experiences of relations between corruption, development and politics demonstrate in the recent history of Asian, African and Latin American countries (Johnston, 1986; Szeftel, 2000)… More broadly, corruption is endogenous to many political structures in which it serves key hierarchical functions, thereby contributing to the political order (Cohen et al., 1981; Charap and Harm, 1999)" (Le Billon, 2003, pp. 413-313).

[308] On state capture see Omelyanchuk, 2001.

and possibly antagonistic groups and regions can help to stabilize a country's politics and economy. The tacit institutionalization of corruption within the hierarchy of the state apparatus – for example by means of below-subsistence civil service wages or the purchase of decision-making positions – is a powerful mean for a ruling group to retain the allegiance of its individual members and organizations, by providing both an inescapable economic incentive (access to rents/bribes) and a disciplinary threat (dismissal for corruption)" (le Billon, 2003, p. 416). From this point of view, rather than corruption, it is the change in the pattern of corruption that can lead to conflict and even to violence.

In the following section we will examine the levels of corruption and organized crime in the two studied countries, trying to trace the factors favouring the development of the corruption, the registered mechanisms and channels of state capture, describe the steps undertaken by the governments to fight back (or promote) the corruption and examine the factors that eventually brought to the adoption and implementation of the anti-corruption legislation. As many of the mechanisms fostering corruption were explored in the sections concerning judiciary, administrative capacity and police reform, here we will concentrate on other dimensions of the fight against corruption: the anti-corruption legislation, the mechanisms of public finances control, the financing of the political parties in particular. Being strictly linked with the exercise of power and power-holders, corruption represents one of the most difficult issues to tackle, as it assumes that the ruling elite limits its own power and submits itself to control and accountability. When widespread, corruption becomes an issue uniting the rulers against the ruled, turning the anti-corruption legislation into a symbolic policy, aimed for the "publicization" (to be spent in media campaign) and doomed from the beginning to be obstructed in the implementation phase. Finally, many of the factors favouring corruption are at the same time its consequences, this way creating a vicious circle which is very difficult to exit. As we will see, the two countries at study performed rather purely when it comes to fighting the corruption back, combining the intensive rule adoption with the complete lack of implementation and fake compliance.

9.1. SERBIA

9.1.1. HERITAGE FROM THE NINETIES

In the aftermath of the 5th October 2000, the corruption represented one of the most serious problems Serbia was facing[309]. During the Nineties the corruption penetrated all structures of the society and reached such high levels that many Serbian citizens considered some of the subtypes of the corruptive behaviour (particularly nepotism, cronyism and all those practices that do not directly involve cash-payment) as a normal, daily practice, almost an obligation of the well-educated person[310]. For many, corruption was the way to survive[311], and for some it was the way to gain power. On the top of the centralized structure of corruption in Serbia was its authoritarian leader[312], Slobodan Milošević, awarded the 5th place on the Transparency International's list of the top ten most self-enriching leaders in the recent years[313].

There are no available data in the corruption perception index for Yugoslavia for 2000 or 2001, but the index of 2.3 in 2003, after almost three years of fight against corruption and after the adoption of a series of laws in the field, very well testifies the levels of corruption towards the end of Milošević's regime. According to the public opinion surveys conducted in the summer 2000, 80% of citizens believed that all state and public institutions are corrupted (Mihajlović et al. 2000).

As far as the organized crime is concerned, according to the Transcrime report, there are more than 50 organized crime groups active in Serbia and Montenegro, horizontally organized with 3 to 10 members, composed of both nationals and non-nationals coming from Bosnia and Croatia. They operate both inside the country and internationally, of particular importance being the activity in the neighbouring countries: Turkey, Austria, Germany and Italy. Seen its geographic position, Serbia represents one of the most important transit countries for drugs, weapons and human trafficking (Savona and Curtol, 2004). The very large security sector

[309] See Begović and Mijatović, 2001. Also Baracani, 2005.

[310] According to the public opinion research undertaken by Mihajlović in summer 2000, more than 70% of the citizens would offer a bribe in exchange for a service, more than 60% of citizens considered bribing the only way to ensure that one enjoys his own rights, more than 50% considered cronyism and nepotism acceptable, and more than 60% believed that Serbia is doomed to corruption (See Mihajlović at al., 2000).

[311] During the Nineties the economic crisis and inflation brought the salaries to such a low level that most of the citizens (particularly those in the public sector) were near to starvation.

[312] Begović and Mijatović 2001 distinguish between centralized and decentralized corruption, arguing that in Serbia's case the corruption was centralized.

[313] "Plundering politicians and bribing multinationals undermine economic development, says TI". Transparency International (2004).

developed during the Nineties, the involvement of Serbia in the Balkan conflicts and the high levels of corruption created an extremely favourable environment for the organized crime. The assassination of the Prime Minister by a member of the special security unit, who was also proved to be the head of one of the biggest criminal groupings in the country, illustrates the salience of the problem (for the links between Serbian security forces, war crimes and organized crime see also the chapter on the security forces).

The causes of the development of corruption in Serbia, according to Begović and Mijatović (2001), can be classified in three macro factors: economic, political and juridical.

The economic system between the end of the 80s and the beginning of the '90s was recognized as one of the most important causes for corruption in Serbia. The large public sector, the delayed economic reforms, the state intervention in the field of economy, the very large and complicated system of regulations and procedures, the mix of state, society and private property, poverty and economic crisis the country experienced, represented the fertile ground for the development of corruption. The Balkan wars were used as an excuse to pass to the "war economy", that represented the further strengthening of the involvement of the state in the economy and allowed to postpone the economic reforms. Finally, the UN economic sanctions turned the smuggling into state business and the smugglers into national heroes.

The political reasons that brought to the overspread of corruption are to be found in the lack of democratic institutions, the authoritarian regime of one man, control of the regime over the finances, strong security forces under the command of the regime, the narrow elite's control over the state-owned corporations, the control over the legislative and executive, the recruitment policy based on the political "acceptability" and obedience[314]. Similarly, the war in the Balkans and the involvement of the Serbian military, police and security forces in the war in the former Yugoslavia, together with the creation of the paramilitary forces, represented an extremely favourable setting for the development of the organized crime (see the chapter on the security forces).

According to some authors, the corruption in Milošević's period was conducted from above and was propelled from the centre. The strong hierarchy and the loyalty-based recruitment system that requested blind obedience from the lower officials was completed by the possibility given to the officials to be involved in the corruption without consequences. The small salaries were there to ensure the involvement of the bureaucrats in the corruption chains that would guarantee their loyalty to the regime. Begović (et al.) underlined that the

[314] See Begović and Mijatović, 2001.

corruption in Serbia was both centralized (in relation to the private interest), and decentralized (in relation to the citizens). It was both administrative and political, and it penetrated all aspects of society: not only the ruling institutions and administration, but also the judiciary, police, security forces, the health and education, the social assistance.

The final set of causes identified by Begović and Mijatović concerns the legal and constitutional framework: the existence of numerous norms on one side, with significant legal "shortcuts" on the other, the horizontal as well as vertical lack of harmonization of the legislations, the lack of control and responsiveness mechanisms, the institutions with unclear division of competencies and too large liberties left to the bureaucrats in the process of law interpretation and enforcement were a good basis for the "nothing is easy, everything is possible" state.

The corruption during Milošević's regime penetrated all segments of state and society, and, we should add, the "democratic opposition" was not immune to this disease. The previous ruling experience of the parties composing DOS should also be included among Milošević's regime legacies, that contributed to the new ruling elite's incapacity to decisively strike back on corruption. On the local elections in 1996 the "democratic opposition", as it was called, gained the majority in several cities. After a few months of long protests, the regime was forced to accept the electoral results and the opposition parties came to power in all the large cities in Serbia. This resulted in a constellation of powers in which the "democratic" local governments developed democracy within an authoritarian regime. As Dahl already underlined, it is difficult to imagine democracy developed within a non-democratic unit, and Serbia in the '90s clearly showed it. As some annalists underlined, the local democratic elite behaved in the precisely identical manner as the regime: corruption and clientelism became their hallmark as well (see Vuković, 2002). This resulted in a situation where the lower-rank party officials got involved in very serious cases of corruption, and, moreover, developed a strong financial and security interest in not facing the issue. Even when the party leadership was determined to give a definitive strike to corruption, the pressures coming from both outside and inside the political parties represented a difficult obstacle to any change in the existing practices.

9.1.2. Corrupted against Corruption

Immediately after the regime change, the development of the legislative framework aiming to fight corruption began. The fight against corruption was one of the most important issues

on the new elite's political platform, and at the same time one of the most salient issues on the public agenda. In January 2001, the corruption was perceived to be the most serious social problem together with poverty, political instability and criminality[315], so activities to face the issue were undertaken already in 2001. The legislative framework put in place in order to fight the corruption was composed of a series of laws classically understood as systemic measures for fighting and preventing corruption. However, as we will see, in all cases the adopted legislations suffered from serious shortcomings.

The first steps were undertaken in October 2001, when Đinđić's government formed the Council for the Fight Against Corruption. The body was formed within the government and was supposed to have an advisory role. The first composition of the council, appointed in December 2001, clearly showed the political will of the decision maker to face the issue: the members were chosen from the lines of eminent professionals and scientists known to the public as non-partisan members of the intellectual elite[316]. However, only 6 months later, came the first resignations: the president of the council Beljanski resigned "as he did not share the government's understanding of the fight against corruption". As the government failed to nominate new members to the council, it decided to change the number of members from 15 to 11, but the council failed to elect its president and remained blocked until the beginning of 2003.

In this first period after the regime change, in the field of the fight against corruption we also account for the introduction of corruption as a criminal offence through the amendments to the criminal code adopted in February 2002[317] and the first Serbian Law on Public Procurement. Even though the legislator was rather successful in designing the legislative framework, defining the crime of corruption and prescribing severe measures against it, in the last years numerous cases of highest-level corruption that involved the political leaders were only discussed in the media but never investigated or prosecuted. Similar difficulties in compliance are registered in the case of the Law on Public Procurement. Prepared in cooperation with the international experts, it was assessed as mainly in line with the European Standards. The law prescribed the establishment of the Agency for the Public Procurement, under the Ministry of Finance, and the Commission for the Protection of the Rights of Suppliers. The Agency for Public Procurement was formed in 2004, when the law started with

[315] See, Begović B. and Mijatović D., 2001.
[316] On establishment of the Council for the Fight against Corruption and its role, see also Dallara, 2008.
[317] http://arhiva.glas-javnosti.co.yu/arhiva/2002/02/26/srpski/D02022505.html.

the implementation. Even though its implementation brought to an increase in the transparency of the public procurements[318], some shortcomings in the legislative framework and difficult implementation are registered in this field as well. The legislation covered only the processes of opening the tender, collecting offers and contracting, leaving the procedure of planning the procurement as well as the control of the contract's realization to the still un-functioning State Audit Institution. Further on, the submission of the agency to the Ministry of Finance opens the door to the political influence that represented a serious problem in the functioning of the agency[319]. In 2005 the government brought the decision to declare all procurements in the police as confidential, omitting a very large police sector from the compliance with the law. The implementation of the law is also seriously hampered due to the inadequate size of the agency that is too small to face the workload[320].

While in the period immediately after the regime change some positive steps were undertaken, the deep political crisis that culminated in the assassination of the Prime Minister in March 2003 brought to the surface a series of scandals connecting the ruling elite to the organized crime. As the assassination of the Prime Minister induced the government to make the council functional, the missing members were finally nominated. The council continued to exercise strong pressure on the government, by issuing the analysis and reports on some of the biggest corruption scandals in 2003. In one of the reports, the council even openly accused DOS government for the lack of political will to fight the corruption[321].

In summer 2003, in an effort to increase their legitimacy, the parties agreed and adopted the Law on the Financing of Political Parties. The law, however, even though it was adopted with a very large consensus in the assembly and it enjoyed the support of the CoE and EU, represented a series of shortcomings that further threatened to undermine its implementation. Among the most serious loopholes we find the unclear division of competencies between the bodies that are supposed to control the parties' financing, the lack of an independent body that would monitor the compliance, the discretional powers of the president of the parliamentary commission who is the only one that can press charges for the violation of the law. The adoption of the Law on the Financing of Political Parties represents an illustration of a law aimed to be publicized instead of implemented. It was adopted by the political parties seeking for legitimization, and the shortcomings in the law clearly testify that it was never

[318] See Barać, 2006, also Begović, Jovanović and Paunović, 2007.
[319] See Barać, 2006.
[320] See Begović, Jovanović and Paunović, 2007.
[321] On the relations between the Council and the Government, see Baracani, 2005.

supposed to be properly implemented. It was supposed to enter into force only in 2004 (*after* the parliamentary elections), but its implementation, as stressed by the Council for the Fight Against Corruption, CeSID and Trasparentnost, as well as according to the domestic analysts, is completely lacking. No party was ever accused of the infringement of the law, even though the reports on the financing of the 2007 parliamentary elections did not contain the names of donors[322].

The parliamentary elections in December 2003 brought to power Koštunica who, turning the public attention to questions like corruption and organized crime, promised decisive measures in the field. In the first hundered days of government, the Law on Conflict of Interests was drafted and adopted. However, the process of rule adoption and the content of the legislation showed that such actions were part of a strategy aiming to the image-making and that the laws adopted were only symbolic in the nature.

The Law on the Conflict of Interest was proposed already in 1994 by DS as a response to Milošević's abuse of power, but it felt forgotten until the 2000 change of regime. The process of drafting the new Law on Preventing the Conflict of Interest was initiated in 2002 by the Council for the Fight Against Corruption and by several NGOs. After the parliamentary elections of December 2003, Koštunica, in line with his electoral promise, underlined the fight against the corruption and the adoption of the Law on the Conflict of Interests as one of the government's priorities. The law was in fact adopted very soon after the formation of the new cabinet (April 2004), but without the public debate and according to a simplified procedure used in the urgent cases, which seriously undermined the possibility to remove the several shortcomings in the legislation. Neither the documentation prepared by the Council, nor its recommendations were taken in consideration. Some of the individuated shortcomings were so serious they undermined the law's function: the law excluded the entire judiciary and local self government, both considered to be the main sources of corruption, from compliance. It also allowed (even though it limited) the participation of the parliamentarians to the manager boards of the public companies. The law limited access to the information about the assets of the public officials (in order to protect their privacy), making it almost impossible for those citizens who might have information about the public officials' property to know if the official has or hasn't declared it. The entire design of the Council is considered unsatisfactory, as a body of only 12 persons, without the necessary infrastructures and resources, is supposed to

[322] See Stojiljković Z., Milosavljević M., Simić M., Vuković S., (2005), CeSID, 2005, Komentari na zakon o finansiranju političkih stranaka i predlozi za unapređenje zakonske regulative, Interview with Barać, 2008.

control the declared assets of more than 13.000 officials (Transparency Report 2006). These shortcomings in both the content and the implementation of the rule adopted clearly show the symbolic nature of the legislation: it was drafted and adopted in a manner to "satisfy" the external and the internal requirements for the rule adoption, without the intention to allow its implementation.

Such façade approach of the government to the question of the fight against corruption soon brought the government and the Council into a new conflict. In December 2004 the Council published the report on the affair with the National Savings Bank, accusing the Minister of Finance of corruption. As a reaction, the government cut the relations with the Council. The Council continued with its activities, making the proposals, issuing reports, revealing cases of corruption and making its recommendations to the government, but, as reported by the council, all its initiatives were ignored[323]. The budget of the Council well illustrates Koštunica's government's concern for this institution: the council's portion in budget during 2004-2007 never passed 0.0028%, one third of the budget share it had in 2003 (see the Table 8 in the appendix).

The conflict that bursted between the government and the Council for the Fight Against Corruption, together with external and internal pressures to take serious steps in the fight against corruption, brought Koštunica's fragile minority government in a position where actions to fight back the corruption, at least formally, shall be undertaken. Thus, the National Strategy for the Fight Against Corruption was finally designed in 2004, and, with serious delays, adopted in 2005, after almost 3 years of repeated and underlined need for that document. The National Strategy was drafted in cooperation with the European experts as well as domestic NGOs, and it obtained a rather good evaluation, while the Action Plan is adopted in the government during the electoral campaign on the 28th December 2006. The government also announced that it adopted and sent to the assembly the long-awaited for Law on the Special Anti-Corruption Body, but then, almost silently, the law went out of the procedure and returned to the government in order to be re-designed. As the Transparency 2006 report on Serbia says, "given the international community's interest in Serbia's institutional evolution, legislation is often introduced more to comply with external pressure than to meet domestic needs. The implementation of laws adopted under these conditions is

[323] See the Council's report for 2006.

often weak. This applies equally to the Information Law and much of the anti-corruption legislation adopted in recent years"[324].

The Law on the State Audit Institution was also adopted in 2005. Seen the complete lack of control over the public spending (the last report on the budget spending was submitted in 2002), the establishment of an independent state audit was of crucial importance in preventing the abuse of the state resources. However, this legislation, as all anti-corruption documents adopted in this period, represented nothing more than a fake compliance of the publicity seeking ruling elite. As underlined in the analysis of the Commission for the Prevention of Corruption, the institution of State Audit was given so large competencies and obligations that the very functioning of the institution and its capacity to monitor the public spending is questioned. Further on, the independence of the institution is undermined due to the procedures that put both the appointment and the dissolution of the Council in the hands of the parliamentary majority. The Council of the State Audit Institution was supposed to be appointed before May 2006, yet this deadline was not respected and the body was finally formed in September 2007, when the ruling majority appointed the candidates. The independence of the institution was undermined already prior to the appointment of its members, as the candidates were "divided" between the ruling political parties (each nominating a certain number of candidates), while the opposition strongly criticized such solutions, questioning not only the political neutrality of the candidates, but in some cases also their personal integrity as well as the fulfillment of the conditions for the appointment[325]. One year after the appointment of the council, the state auditors are still lacking the basic conditions for their work (they are not even assigned an office, not to speak about the elementary infrastructures).

The failure to implement the existing legislative framework resulted in very negative reports on the levels of corruption in Serbia in 2007 and 2008. The ranking of Serbia on the corruption index worsened, while due to the failure to comply with the GRECO recommendation Serbia risked to be declared as a "non cooperative" country, putting the country's membership in CoE at risk [326]. The government proceeded with drafting a set of anti-corruption laws that were submitted to the assembly in September 2008 (still in procedure). While the international experts positively assessed the law drafts, the domestic

[324] Transparency, 2006 report..
[325] http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=09&dd=18&nav_id=264059.
[326] http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=10&dd=15&nav_category=11&nav_id=267800.

experts in the fight against corruption are very suspicious about both the legislation's content and the government's devotion to the issue. As Barać, president of the Council for the Fight Against Corruption, underlined, Serbia already has the set of laws to fight against corruption, so the main problem is not the lack of legislative framework, rather the lack of political will to strengthen and implement the existing legislative framework. According to the domestic experts, the rule adoption is just one in a series of fake compliance steps. Instead of strengthening the existing bodies, the Law on the Agency for the Fight Against Corruption is actually dismantling the existing institutions, some of which, like the Council for the Fight Against Corruption or the Commission for the Protection of the Concurrency of the Market, proved capable to go against the ruling oligarchs. The continuous undermining of the institutions, the obstruction of the consolidation of the existing institutions, the high levels of legal uncertainty, all these are phenomenon the domestic experts recognized as the tactic for the corrupted ruling elite to avoid the fight against corruption[327].

9.1.3. The Domains and Causes of the Corruption in Serbia

After the change of Milošević's regime, the fight against corruption was among the top priorities of the newly formed democratic government. However, the negotiated nature of the transition and persistence of the old cadres, many of which not only loyal to the previous regime, but also involved in corruption and crime cases, limited the capacity of the new government to cope with the problem. The lustration process never took place and, except for Milošević and the very narrow circle of his supporters and family, the members of the previous elite were not prosecuted for the abuse of power and crimes committed. Even though the anti-corruption council prepared well-testified charges against the heads of the previous regime, the procedure was blocked in the office of the public prosecutor and the Prime Minister Živković justified the delay of the process due to the "sensitivity of the issue"[328].

The negotiated nature of the transition also meant the lack of political strength to face the problem of the Serbian business elite. The Serbian economic elite was born during a period of international isolation, under an authoritarian regime and in a war-shaken society where corruption, grey economy and organized crime were tightly linked to the central authorities[329].

[327] The interview with Verica Barać. See also the statement of Goati for B92, September the 23rd, 2008.

[328] Barać and Zlatić, 2004.

[329] For the links between the political, economic elite and organized crime in Serbia and Croatia, see Rotta, 2003. On the link between nationalism, organized crime and corruption and on the influence the international isolation has on the development of such links, see Kemp, 2003. On the links between the Serbian elite (political

After the regime change, the economic elite succeeded in legitimizing itself and established strong ties with the new political circles, ties which, in lack of transparent and efficient political institutions, took the shape of nepotistic/corruptive links[330]. The financing of the political parties and the link between the business elite and politicians are the basis of the state capture that took place in Serbia and a key for understanding the Serbian difficulties in successfully fighting back the corruption[331].

To these factors we should add the particularities of the Serbian political and party system that finally contributed to the state capture we register in Serbia. In the section on the form of government we explored the impact of the polarized pluralism type of party system on the electoral accountability of the central actors of the system. The ruling elite, free from the electoral responsibility and enjoying high certainty over future competitions, is by no means motivated to strengthen the inter-institutional accountability or to limit its own power. The lack of judiciary independence, the politicization of the state administration and the parties' control over the mandates (see the relevant chapters) represent the mechanisms that concentrate the judicial, executive and legislative power in the hands of a narrow political leadership. Such complete, unlimited control over the state opens the possibility for the party leaders to pursue their personal interests and those of their business partners without any checks from below. The list of unpunished and unprocessed cases of large-scale corruption, involving top politicians, that, together with the well-prepared proofs and documents, the Council for the Fight Against Corruption submitted to the government and the public prosecutor, testifies on the levels of the impunity enjoyed by Serbian oligarchs[332].

Finally, a very large public sector inherited from the previous regime and the privatization that was opened only after the change of the regime offered a very high stake in the game both for the political elite controlling the state resources, and for the economic elite seeking to

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and economic) and the organized crime during the '90s see the report of the Southeast European Legal Development Initiative, "Anti corruption in South-eastern Europe: first steps and policies", on the difficulties and costs of the integration with the EU rising from the existence of the economic elite linked with the nationalist pattern governments see Vachudova, 2003. See also the section on the economic issues.

[330] For the paradoxical legitimization of the illegal profit through the law on extra profit with retroactive effects, as well as on how the law implementation brought to the establishing of the ties between the economic and political elite, see Mijatović, 2005, Bisić, 2005, Prokopijević, 2002.

[331] See Pešić, 2006.

[332] One of the most famous examples is the one concerning the minister of finances, Dinkić, was discovered and publicly accused of being involved in the corruption scandal on the National Saving Bank by the Council for the fight against corruption, but no legal consequences followed (except that the government cut the relations with the council as described above). Similarly, his colleague, Ilić, minister of capital investments in both Koštunica's governments, was involved in the corruption scandal concerning the Serbian Railways company, again without any consequences.

increase its own capital. The Law on Privatization was adopted soon after the change of government. Beside inadequacy of the adopted model of the privatization[333], the law also centralized the process, strengthening the state's control. The lack of clear, transparent criteria in deciding the winner of the auction/tender brought to the predomination of the bureaucratic arbitration in the process and opened the door to corruption. The law was amended in May 2005, yet not in order to incorporate the recommendations of the international actors and Council for the Fight Against Corruption, but in order to further increase the discretional powers of the Agency, contributing to the further lack of transparency in the process of privatization (see Barać, 2006, p. 23).

9.1.4. EU and Fight Against Corruption in Serbia

The process of the EU democracy promotion in Serbia included the fight against corruption as one of the areas of intervention. Both conditionality and socialization mechanisms were used. As we can see in Table 2, the fight against corruption was considered an issue needing particular attention in each of the EU documents, both in the SAA reports (in the paragraph on the areas needing attention) and in the European partnership. Moreover, some measures such as: de-politicization of public administration and judiciary independence, reform of the police, reform of the recruitment system in all sectors, even though indirectly, also included measures that, if well designed and implemented, would help fight back corruption. However, as these areas are already examined in other paragraphs, we decided to deal only with the recommendations and rule promotions of those norms that are included in the EU documents under the label "fight against corruption".

We can observe how, passing from the SAA reports to the EU partnership, the shape of conditionality changed. It became more concrete, with the prescription on the pieces of legislation to be adopted, which surely strengthened the credibility of the conditionality on the matter. However, we shall underline that even though corruption is considered a serious problem in Serbia, only in 2007 it was included among the key short-term priorities. The credibility of such step is, however, undermined, as it is the case with all other areas of EU intervention in Serbia, seen that more urgent issues, such as the ICTY, Kosovo and the rising of the security issues, are undermining the credibility of the EU democracy promotion in Serbia.

[333] See Janković, 2006, Prokopijevic 2002. See the section on economic issues.

As for the participation to international forums and socialization channels of influence, Serbia became a part of GRECO (Council of Europe's initiative, Group of States Against Corruption) in 2003, and the international experts (CoE, Transparency international, EU office) were all very active in designing the legislations, especially in drafting the national strategy for the fight against corruption. The participation to GRECO opened the door to another source of conditionality and influence[334]. The 2005 GRECO evaluation report brought about 25 recommendations considering the adoption and the implementation of the laws and by-laws. The third-round evaluation that started in January 2007 revealed the lack of compliance of Serbia with GRECO recommendations and, according to the statement of the president of GRECO, Drago Kos, this lack of compliance seriously compromised Serbia's position in CoE. In the statement given on 15/10/2007, Kos made explicit that the non-compliance with the GRECO recommendations is one of the criteria used by EU in evaluating the political developments in the country. He made clear that if the Law on Anti-corruption Agencies and the action plan are not adopted, Serbia might be declared as a "non cooperative" country, a status that brings in first instance the obligation of three-month reporting, and – in cases of further lack of compliance – the loss of membership in CoE[335].

The fight against corruption was also included among the objectives of the CARDS program in the area of good governance and institution building (directly mentioned in 2004 with 64 millions of euro).

The EU and CoE also served as an incentive for Serbia to get involved in a series of conventions in the field of fight against corruption, such as the European Convention on Laundering, Search, Seizure and Confiscation of the proceeds and Crime and UN Convention for the Fight Against Corruption.

9.1.5. The Fight Against Corruption and Organized Crime: Assessment

Even though the Serbian ruling elite is announcing a more decisive fight against corruption and the adoption of a set of laws, we might observe that the legislative framework for fighting against corruption in Serbia is already in force and that rather than the lack of legal means, the real problem is the weakness of these laws and the failure to implement them. In the development of the instruments to fight against the corruption in Serbia we can distinguish

[334] On the importance and limits of the Council of Europe in promoting the fight against corruption in Serbia, see Dallara, 2008.

[335] http://www.b92net/info/vesti/indexphp?yyyy=2007&mm=10&dd=15&nav_category=11&nav_id=267800.

three moments in the development of the legislative framework. The first period goes from January 2001 (when the newly elected DOS government, with Đinđić as Prime Minister, took the power) until the mid-2002 when the first resignations in the Council for the Fight Against Corruption took place. A series of positive conditions are registered in this period:

- Existence of change agents in the lines of government and strong popular support for the actions against corruption;
- The new ruling elite and the instability of the future electoral competitions;
- Lack of links between the new political elite and the business sector;
- The issue being brought to the agenda thanks to the elite's formal devotion to the issue and its inclusion into the core of the political program of the newly elected coalition;
- Finally, the ruling elite was *new*, and being so, prosecuting and fighting back corruption was a decision hitting the *old* elite involved in the corruption cases, it was tackling the *old* links established between the politics business and eventually underground, and being so the case, it coincided with the goals of the new, emerging ruling elite.

At the same time, however, a series of negative aspects were also influencing the situation:

- The "negotiated" transition and the conflict between DSS and DS ensured that the policy of continuity prevails;
- The lack (and impossibility to undertake) the process of lustration. All aspects of government: judicial, security system, administration, health and education system in particular were completely penetrated by the personnel involved in the corruption chains, representing a strong veto player blocking the change.

In the first period we only had a couple of provisions adopted: a change in the penal code to include corruption, the Law on Public Procurement and formation of the Council. The behaviour of the decision-maker at the time (declaring assets on voluntary bases, creation of a strong and influential council) all point to a direction of the existence of the political will and presence of change agents devoted to the issue in the ruling class. The political instability in the situation of the new ruling elite could be a positive incentive if it was not for the fact that DOS was not a completely "new" elite (the parties were already at power in the local governments, with already developed corruption channels). The strong veto players were operating: on the one hand the elite of the ancient regime fearing persecution, on the other the "new potential (ab)users", but, even more importantly, all Serbian "tycoons" and "donors"

who for years were sustaining the regime, and ready to invest in the new democratic order in exchange for the influence in the decision-making. The international pressure existed, both in the shape of conditionality and through the socialization channels, but corruption was not among the most salient issues of the IA promotion package.

The second period is characterized by the turbulent inner politics when the crisis within DOS between DSS and DS was consuming all the political energy, together with the issues of Yugoslavian state destiny and negotiations with Montenegro. Moreover, being the conflict between old-new, continuity-discontinuity, radical reform or incremental change the cause of the DSS-DS split, it is no surprise that an issue getting to the core of the future distribution of power could not be faced in a period of governmental instability. This crisis exploded in March 2003 with the assassination of the prime minister Đinđić, when the government proclaimed the state of emergency, on one hand undertaking a series of drastic measures in the fight against both the organized crime and corruption, but on the other opening the Pandora's box of partisan-motivated accusations[336]. In such situation the government, in search of legitimacy, re-established the council and adopted the crucial piece of legislation: the Law on Financing of Political Parties. Unfortunately, seen the behaviour of the parties, the rule adoption was possible only because of the consciousness that the rule would not be implemented. Such conclusion is grounded on the fact that the law itself contained elements that would impair its implementation. Thus, the maximum amount that can be spent for financing the electoral campaign is far above the real cost of electoral campaigns. The political parties have two choices: either to lose the elections, or to infringe the law. On the other hand, the body authorized to monitor the financing of the electoral campaign is actually a politicized body (republican electoral commission) composed of members elected by the parties.

The third period, 2004-2007, was characterized by the rule adoption and, at the same time, the lack of political will and absence of truly devoted change agents, who would bring to the implementation of the rules, among the decision makers. The number of the veto players on the other hand increased (while in the first transition years there were elements not included in the process of political corruption, the predominance of one block at the power and the establishment of the polarized pluralism party system brought to the involvement of the "no

[336] Let us just remember that during the electoral campaign DSS underlined that they know and have proof of the political background of Đinđić's murder only to admit, few months later, when called to open the investigation, that the announcements was part of the electoral campaign.

longer new elite" in the corruption circles). But as both the public opinion and the international community increased the pressure (we saw how the EU passed from general recommendations to more specific requests that precise rules or documents are adopted), the government's need for legitimacy brought to formal compliance and rule adoption. What made the rule adoption feasible was the "symbolic" nature of the adopted legislation, never meant to be implemented. In a situation when the veto-players in search of legitimization behave as fake change agents, the "symbolic" rules are easily adopted.

9.2. Macedonia

9.2.1. Heritage from the Nineties

The corruption in Macedonia is believed to be one of the most serious problems hampering the democratization process. According to the public opinion surveys, in 2002 the 83% of citizens believed corruption to be the most urgent problem a new government should solve (Gaber-Damjanovska and Jovevska, 2002), while, according to the 2000 opinion polls, more than 81% of the citizens believed that all or most of the state officials are corrupted (this figure is taken from Labovik 2005). The country's positioning on the "corruption perception" scale is also clearly illustrating the point, the country occupying the 103rd place in 2005. In the report of the International Crisis Group for 2002, the level of corruption in Macedonia was estimated to bring an annual cost of about 200 million dollars, inducing the ICG to accuse the Macedonian donors that, instead of democracy, they were actually financing the corruption (Gaber-Damjanovska and Jovevska, 2002). It was mainly due to this ICG report that the attention of the IA and domestic civic society shifted to the problem, both actors starting to perceive corruption as one of the most serious issues hampering the rule of law in the country and the greatest obstacle to the much needed FDI.

As far as organized crime is concerned, according to the Transcrime report, there are about 10 organized criminal groups operating in Macedonia, organized hierarchically and made up of both nationals and non-nationals. Their activity is transnational, with particularly well-developed connections with the Albanian and Serbian organized crime groups. They are active in the Balkan area and Eastern Europe area (in particular Russia, Moldova, Ukraine, Turkey), as well as in the EU member states (Austria, Germany, Greece, Italy, Romania, Bulgaria,

Slovenia, Slovakia, Hungary)[337]. The main activities these groups are engaged in are drug trafficking (Macedonia is a transit point of the Asian heroin and South American cocaine for the market of the western Europe, the Albanian mafia originated in Kosovo and Macedonia holding the big share of the drug markets in Austria, Germany, Hungary, the Czech Republic, Poland and Belgium and almost the entire Swiss market), trafficking of human beings (Macedonia being both the transition and the origin country for trafficking of women for prostitution purposes), and smuggling of the stolen vehicles (see "The contribution of data exchange systems to the fight against organized crime in the SEE countries final report 2004"). Other activities, such as smuggling of migrants, tobacco, cigarettes and goods, as well as money laundering, are also rising concerns.

In order to understand the causes for corruption and organized crime in Macedonia, to the factors usually underlined in the studies of the post-communist transition, the particularities deriving from the Balkan ethnic wars should be added. In Macedonia's case (similarly as we underlined for Serbia), the already favourable ground for the development of corruption (deriving from the drawbacks of the communist system, non-existent or low-developed democratic norms and values, inefficient and underdeveloped economy and non-transparent decision-making processes), was combined with the proliferation of the organized crime (especially of smuggling, trafficking and illegal trade) in the whole Balkan region due to the ethnic war and the international community embargo to the FR Yugoslavia[338].

The analysis of corruption and organized crime in Macedonia can not omit the important impact the ethnic tensions and the 2001 conflict in Macedonia had. According to many authors, the ethnic violence that took place in 2001 was tightly linked to the "state capture mixed with the administrative corruption" identified by Kempt (Kempt, 2003). However, the causal link between the organized crime and inter-ethnic conflict is blurry, as the conflict creates a situation when the corruption and organized crime can flourish, while at the same time the conflict can be a *product* of the political corruption and organized crime interests[339]. As Kempt would argue:

> "Conflict creates an environment where corruption and organized criminal activity can prosper, to the extent that they become impediments to conflict resolution and post-conflict

[337] See Savona and Curtol, 2004.

[338] In an effort to ensure the international recognition, Macedonia made enormous economic sacrifices by respecting the UN embargo on Macedonia's main trade partner, Serbia. The effects of this embargo were further aggravated by the unilateral embargo imposed by Greece on Macedonia due to the name issue.

[339] See Hislope, 2001, 2003. A similar mechanism of the link between political corruption and war (here interstate war) can be found in Snyder, Myths of Empire.

> rehabilitation. Perpetrators are sometimes parasites of the conflict; in other cases a symbiotic relationship develops between political and criminal elements. It will be noted that in some cases conflicts that are labelled 'inter-ethnic' have little to do with ethnic or national-cultural issues and more to do with defending narrow economic interests." (Kempt, 2003, p. 49).

In his realistic analysis of the inter-ethnic conflicts, Kempt reminds us of a very obvious fact often forgotten in the value-guided analysis: the very nature and bursting of the ethnic conflict is a ground where, for the logic of matters, the leaders of the secessionist (anti-state) group are strongly propelled to use the channels of the organized crime. First off, the ethnic conflict means arming, and in order to find the weapon supply the leaders of the secessionist ethnic group often have no other choice than the channels of the organized crime (after all, any arming would be against the law, and therefore criminal). Often this link goes further, in order to ensure financing as well. Finally, the support to the ethnic paramilitary groups given by profit-seeking criminal groups is also common. In fighting back the secessionists, the state and the majority group might also be forced to develop the links with the criminal groupings (see Kempt, 2003).

At the same time, the organized crime can use the inter-ethnic conflict and provoke the violence to cover up for their own activities (we will see an example in the chapters concerning the reform of police in Macedonia). The ethnic tensions are at the same time the mask the organized crime can use to hide its activity, and the goal in the name of which the ethnic leaders might decide to get in touch with the organized crime groups. According to some analysts, the 2001 inter-ethnic conflict in Macedonia is strongly linked with the organized crime. The state capture and extremely high levels of corruption of the VMRO-DPA government in the period 1998-2001 brought the Macedonian state to the conflict.[340]

The link between the corruption and inter-ethnic relation is, however, not necessarily one directional, and not necessarily does the corruption produce or nourish the inter-ethnic conflict. In some cases, it can also be a mean of peace. In the theoretical model of the inter-ethnic peace, Hislope perceives the "exchange" (the informal, spontaneous self-interest guided exchange between the political actors) as one of the three mechanisms of the inter-ethnic peace, and identifies in corruption and patronage politics the link that allowed Macedonia's first peaceful decade of independence. In the period until 1998, the Albanian minority party PDP was part of the ruling coalition, playing a cooperative, democratic game, in exchange for the participation to the government and access, together with the Macedonian ruling parties,

[340] See International crisis group, "Macedonia's Public Secret: How Corruption Drags the Country Down," n.133, (August 14, 2002). See also Hislope, 2003.

to the "profits that accrued from the vast network of sanctions-busting operations that mushroomed during the international embargo against Yugoslavia (1992- 1996)" (Hislope, 2003, p. 7). Such "coalition of convenience" survived "despite severe economic dislocation, estranged ethnic relations in society, and repeated regional crises (e.g., the Bosnian war, unrest in Kosovo, Albania's meltdown in 1997) that threatened to spill-over into Macedonia" (idem, p. 8).

The linkage of the corruption and organized crime with the ethnic divisions, peace and stability brings the issue to the core of the understanding of the Macedonian transition. It also calls for particular attention when seeking the solution to the problem. We already underlined how the ethnicization of politics is continuously used in order to decrease the transparency of the decision-making process and to allow the parties to maximize their personal benefits (see the chapter on IAC). The tendency to maximization of the Albanian party's requirements described in the previous chapters is continuously questioning the fragile inter-ethnic consensus Macedonia resides upon. The corruption in the '90s appeared to be the key of Macedonian stability and a mean of the inter-ethnic peace. In 2001, it was the fuse that brought Macedonia to explode. How diffused is corruption in nowadays Macedonia? And, even more importantly, what is its role?

In the following section we will concentrate on corruption and state capture in Macedonia, trying to assess the levels of corruption, its causes and the measures undertaken to prevent it, to turn then to the problem of the organized crime.

9.2.2. Mechanisms and Channels of Corruption in Macedonia

In Macedonia's case, literature identified the presence of two "types" of corruption. First of all, there is a presence of what is labelled in literature as "state capture", a situation "related to the operation of certain individuals, groups, companies which by corruption influence the adoption of certain laws, decisions, court verdicts, erroneous management of bank funds and similar with the purpose of acquiring personal or benefit for the party" (Labovik, 2005, p. 72). Hristova's analysis (2005) brought some clear examples of how the state institutions and resources are literally captured by the political elite. Further on, we can also register the spread what is known as "administrative corruption", referring to the classical variant of bribery and corruption of the public officials and officers[341].

[341] On the presence of these two types of corruption in Macedonia see Sistem za nacionalni integritet, Izveštaj za Republika Makedonija, 2002, also Labovik, 2005, pp. 275 on. On the distinction between the administrative corruption and state capture, see Labovik, 2005, p. 71.

Similarly to what happened in Serbia, here again the economic dimensions and in particular the large public sector inherited from the communism, the delay in the economic reforms[342] and the difficult financial situation during the '90s when Macedonian economy was hit by the double embargo, represented the basis that brought to the development of corruption and organized crime. The UN embargo to Serbia and Greece's embargo on Macedonia de-facto cut Macedonia's weak economy out from its main sources of trade. The difficult economic situation favoured smuggling, which brought to connections between the ruling political elite and the organized crime groups (Kempt 2003, Hislope, 2002, 2004). In the study of corruption in Macedonia, Labovik (2005) identified the economic sphere as the most subject to corruption, mainly due to the economic transition after the communism, where the existence of the large public sector and state-owned property represented a pool abused by the political elite. The process of privatization and the public procurement were identified as the key points of corruption, while the political control over the Agency for privatization, the non-transparent procedure of privatization, the "political protection" mechanisms of the racket[343], the non transparent procedures of public procurement[344] and the process of assigning the licence for the non-taxed import were identified as its main mechanisms (see Labovik, 2005, p. 277-280).

Another factor that favoured the development of the corruption and state capture in the '90s is the weakness of the state and lack of mechanisms of accountability that would limit the political power, block the rent-seeking behaviour of the ruling elite and protect the system from the penetration of the private interest. The politicization of the administration and judiciary was both a cause and consequence of the persistent weakness of the Macedonian state. As we could see in the section on the judiciary and civil service reform, the incapacity of Macedonia to undertake reforms bringing to the depoliticization of the state institutions was mainly caused by the particularities of Macedonian transition. The parallel process of the state- and party system building favoured the patronage politics and the "runaway state building" process. Labovik identifies the third sphere penetrated by corruption in the administration and judiciary, where the lack of merit-based recruitment, politicization of the civil service and

[342] See Vachudova on how the delay in economic reforms influenced the establishment of what she labelled "nationalistic pattern of government", which she considers particularly favourable for the rent-seeking behaviour of political leaders.

[343] The political racket represents the situation when the political parties at power are offering "protection from the financial police and control" and "more favourable business environment" in exchange for financial support..

[344] See below.

judiciary and the lack of transparency are considered the main causes allowing the corruption in these areas. Taseva, in the interview undertaken during summer 2008, underlined that in Macedonia the legislative framework appears fully in line with the international standards, but behind the apparently independent judiciary, the apparently functional agency for fight against corruption, the state audit and a series of other institutions lies the strong political interference of the corrupted political parties. The politicization of all state institutions brings, in first instance, to the state capture and political corruption, and then, indirectly, to the spreading of the administrative corruption and lower-levels bribery, which usually follow the political corruption (the political influence is usually combined with the political protection from the accountability mechanisms)[345]. The economic crisis and the low salaries of the administration and judiciary staff induced the already compromised, politicized staff with harmed professional integrity to seek side-payments, allowing the spread of bribery and administrative corruption.

The political parties are the actor common to all spheres identified by Labovik (2005) as key-areas of corruption in Macedonia. We underlined that the privatization and public procurement, due to the large public sector, represented the cores of the corruption. But we should remind that this is possible only due to the links with the political parties: the privatization agency, the financial police and the public sector and firms are all controlled by the ruling party appointees, which means that only through the parties or party members the favours can be offered. Further on, through the control of the appointments and through the politicization of the judiciary and civil service, the political control is used to open the channels of (political, but also other kinds of) influence that goes from the political elite to the bureaucrats and judges. This way the political elite can ensure the adoption of a favourable court decision or a favour in the administration, to use it for the party or narrow personal interests, or even to exchange it with other actors. Finally, the un-transparent process of rule adoption and weak civil society, in combination with the abuse of the nationalistic sentiments and the nationalistic rhetorics, made the legislative process a subject completely controlled by the unaccountable for, irresponsible ruling political elite.

The strong powers enjoyed by the narrow political leadership bring to the focus the problem of the financing of the political parties, a key point through which the corruption and corruptive practices penetrated the political sphere. The un-transparent financing of political

[345] On political corruption and its link with judiciary and administration in Macedonia see Labovik, 2005, p. 287.

parties in the Nineties was combined with the provision according to which the political party could also drive resources from its own business, which resulted in most of the political parties being *also* the economic subjects. The political party at power used the state resources to ensure a preferential treatment for its own firms. In 2000, after the first change in power threatened the established equilibrium, such provision was abolished by a constitutional court sentence. However, the political parties hampered the implementation of the CC's sentence by passing the property and shares to their own members, who became shareholders in various companies and banks[346]. The lack of control over the parties' financing persisted even after the adoption of the new Law on Financing of Political Parties. As one Member of the Parliament stressed, when a party functionary brings the money, he is praised by everyone and no one, not even the party leader, asks where the money comes from[347]. Even though the new legislation establishes the obligation to declare the received funds and to submit the annual financial report to the Ministry of Finances, to the Agency for Public Revenues, to the Central Register and to the State Audit, however the real control over the spending and donations is hampered by the political control over each of these agencies. The analysis of Treneska (2004) revealed that the sources of the illegal finances in the electoral campaigns are many, going from "cash" financing and cash payments, to malversations with the accounts, and use of the illegal sources: foreign donations[348], donations from public companies (where the managers, political appointees, use their position to transfer the company resources to their political party), and even donations from the organized crime, drug- and weapon smuggling, prostitution and illegal gambling (Traneska, 2004).

The link between politics and the organized crime is of crucial importance in this case, especially seen that the inter-ethnic conflict represented one of the causes/consequences of the spreading of the organized crime in Macedonia. The high level of corruption and state capture, the weak state and lack of an independent, professional judiciary represented the channels the organized crime used to avoid justice (see Buscaglia and Jan van Dijk, 2003). During the 1999 NATO intervention in Kosovo and the 2001 violence, the paramilitary groupings, both Albanian and Macedonian, strengthened their links with the organized crime. The ONA (Albanian paramilitary grouping active in Macedonia) developed its logistic links with the Kosovo's UCK and Albanian mafia active in Kosovo, while the paramilitary unit

[346] See Labovik, 2005. See also Southeast European Legal Development Initiative, 2002.
[347] Ramadani, 2004.
[348] The Southeast European Legal Development Initiative, 2002, underlines that, in several cases, international transfers of money onto the accounts of the ruling political parties during the electoral campaign were registered.

Lavovi was created within the Macedonian ministry of interior, including the individuals from the underground (see Stojarova, 2007). In the aftermath of the Ohrid Agreement, due to the enormous pressures from the Albanian parties, and thanks to pressures from the "security-seeking" international community, the Law on Amnesty was adopted granting the amnesty to all criminal acts connected with the conflict, and perpetrated by members of ONA. The reintegration of the ONA fighters into political life, the persistence of the Lions until 2003 when the unit was demobilized while about half of them was regularly enrolled into police and security forces, the lack of lustration process, all contributed to open the channels from the organized crime to politics, making the successful fight against the organized crime and corruption difficult to undertake.

9.2.3. Corrupted against Corruption

The development of the legislation for the fight against corruption in Macedonia followed the lines of an externally induced change. The determination to fight back corruption was rather weak in the first ten years since independence. The creation of the institution of the State Audit (1997) and the introduction of the Law on the Public Procurement (1998) were required by the World Bank and IMF in line with the administrative reform pushed by these two actors. However, both legislations showed serious shortcomings and mainly failed to bring to the expected results[349]. Thanks to the inadequate legislative framework and the built-in loopholes, the public procurement remained one of the most serious sources of corruption, while the functioning of the State Audit Office was seriously undermined due to the failure to ensure its independence (as the body is nominated by the government and then appointed by the majority in the assembly) and due to the lack of powers. Thus, even in those cases when the Audit General revealed the abuses of the state budget[350], no investigation or prosecution of the case were undertaken until the change of government. In January 2002, due to the pressures from the World Bank and IMF, the amendments of the Law on Public Procurement were introduced in order to increase the transparency in the process. However, the legislator failed again to bring the issue in line with the international standards. In March 2002 the Law against Money Laundering entered into force, prescribing the establishment of the Directorate for Prevention of Money Laundering within the Ministry of Finance, but the measure did not

[349] See Labovik, 2005.

[350] One of the most striking examples is the Audit Office's report on the abuse of the health insurance fund, when several thousands of Euros were transferred to the ruling party's account.

bring to significant changes, as the inadequate definition of "money laundering" and the continuous obstruction in the functioning of the Directorate impaired any significant change.

More serious steps in facing the issue of corruption followed in 2002, after the severe criticisms of the ICG brought the problem onto the agenda. The strong ICG criticisms in March 2002, only a day prior to the much awaited-for donors' conference, brought corruption to the core of all international organizations active in the country. The corruption and organized crime came immediately onto the public and political agenda.

Immediately after the ICG criticisms, the Law on Fight against Corruption was adopted (April 2002). The implementation of the legislation was delayed for six months after the adoption, a decision that de-facto amnestied the cases of corruption that took place during the previous periods. The law established the anti-corruption commission, composed of 7 members appointed and elected by the assembly with a wide scope of responsibilities as: corruption prevention among the authorities, conducting the measures for preventing the conflict of interest, the rule initiative and consultative role in the matters linked to the fight against corruption and initiative of the process of investigation and prosecution in the cases of corruption. The law on the commission was criticized by the domestic authors for the delay in its implementation[351], for the failure to establish the Commission as a really independent body, and for the provision according to which the undeclared profits become de-facto legalized through taxation. Further on, giving such wide competences to the commission resulted in a situation where the spheres of authorities overlapped, particularly with those agencies that were originally supposed to undertake the investigative measures (Ministry of Inner Affairs, Financial Police, the Agency for Public Revenues), a solution that only contributed to a hyper-regulation that results in non-action (see Labovik, 2005).

The Law on Fight Against Corruption also faced, for the first time in Macedonian legislation, the question of the conflict of interests (the whole section IV is dedicated to the issue), but according to the domestic experts, especially seen the unclear provisions concerning the implementation, the conflict of interests should be separately regulated.

As the corruption got to the centre of the public attention, the newly elected SSDM government made the fight against corruption one of the key points in its policy. The Commission was formed by November 2002, and it began its work with exercising pressure on the newly elected parliament and on the government members to declare their assets and

[351] See Utrinski, 17. April 2002, Labovik, 2005, Southeast European Legal Development Initiative, 2002.

started the drafting of the State Programme for the Prevention and Repression of Corruption, adopted by the government in June 2003.

The investigation of the abuse of power in the previous period also took place, while the commission started 40 judicial procedures against the officials who failed to report their assets. Some of the high officials of the previous government were accused of corruption and abuse of power, while a series of scandals shook the opposition, who began to accuse the government of political purging. However, the research undertaken by the Transparency International in Macedonia showed that many of the initiated cases were blocked by the prosecutor's office, testifying the high importance of the independence of the public prosecutor's office for the establishment of the rule of law. Further on, as Labovik underlines, the investigation on the corruption cases covered only the period of the VMRO-DPA government, 1998-2002, leaving aside the period prior to 1998 when the SDSM was in power. Similarly, when, after the adoption of the Law on the Financing of Political Parties, the political parties' finances were examined for the first time in 14 years of multipartyism, the ruling parties' accounts appeared clean, while irregularities were identified in the accounts of the oppositional parties" (Labovik, 2005, p. 282). The strong political control over all the institutions that are supposed to keep the government accountable for (from the judiciary to the Commission for the fight against corruption, Agency for Public Revenues, Central Treasury and State Audit Office) withdraws the government from the responsibility and makes the anti-corruption legislation applicable only to the opposition.

In line with its electoral promise and international pressures, the government started with the intensive rule adoption. Following the GRECO recommendations, the amendments to the criminal code and to the constitution were also adopted in 2003, in order to allow the usage of the modern investigative procedures. The Law on Budget and Law on Public Procurement were also amended, creating more transparent and easier mechanisms of control by merging separate budget users' accounts into a single account within the Treasury, which allows the proper supervision and control over the ministries' expenditure commitments and payments. In the Ministry of Finance the Internal Audit Office was established, while in the Ministry of Interior the Special Unit for Investigating the Corruption in Police was established.

In 2004 the Law on Control of Precursors came into effect, bringing the Macedonian law into compliance with the UN Office on Drugs and Crime and European Union standards. Amendments of the criminal code were adopted in order to meet the UN recommendations

and particularly to strengthen the country's fight in the trafficking of human beings. In the same period, the commission for the fight against corruption proposed the amendments in the Law on the Fight Against Corruption, according to which the assets should be declared also at the end of term and the obligation to submit an assets declaration was extended to civil servants in the state administration as well. The commission status was also modified, now being established as a unit where the commissionaires are exercising this role as a main profession (not as a side activity). It was also given its own budget (that amounted to about 0.012% of the budget, to be increased to 0.022% since 2006). The new Law on Public Procurement, this time more in line with the EU standards, was also adopted, but the serious problems in the implementation remained.

The constitutional amendments in 2005 finally lifted the government members' immunity, allowing the investigations of the corruption cases among high officials, while amendments to the public procurement legislation adopted in December 2005 allowed a more transparent functioning of the public procurement system (see EU 2006 report). 2005 also saw the adoption of the Law on the Witness Protection and Law on the Protection of Personal data, both considered necessary pieces of legislation in the fight against the organized crime. In the beginning of 2006 the Law on Free Access to Information was finally adopted (see the section on the human, political and civil rights). In line with the new government's commitment to continue fighting back the corruption, the Law on the Conflict of Interests (2006) was finally adopted, the Law on the Fight against Corruption was amended to stop the political parties from collecting and spending funds from anonymous sources and the State Programme for the Prevention and Suppression of Corruption was adopted in December 2006. The judicial system reform saw the establishment of the special court departments in five basic courts to deal with the issues of the organized crime. The national action plan to fight human trafficking was adopted and a Coordination Centre for Fighting Human Trafficking and Illegal Migration was opened in April 2006.

The main criticism however remains the same, continuously underlined in the EU reports, but also identified by the domestic authors as well: the lack of a comprehensive approach for fighting back the corruption. In this light, the complicated legislative framework, numerous agencies and institutions to deal with the issue, all represent a serious obstacle to the implementation and monitoring. The Commission for the Fight Against Corruption was criticized for its passivity and incapacity to oppose to the governmental requests (see Gaber-

Damjanovska and Jovevska, 2007), as well as for the politicization and conflict of interest (Čangova for Utrinski, 2007). The scandals that shook both the government and the commission in 2007 made the commission's failure to act against the high state officials evident[352]. The strengthening of the legislative framework and police actions against the cases of the administrative corruption are combined with the open violation of the law by the ruling political parties. The scandalous privatization of the power-plant Negotino is just one of the examples of such lack of any rule of law.

The continuous efforts and legislative intervention, the setting of the rules, strategies, and institutions in order to fight back the organized crime brought to only partial results in Macedonia. The EU reports underlined that, even though the basic legislation is largely in place, and the implementing legislation is mainly adopted, the organized crime and corruption persist to be an issue of serious concern. The conviction rate for human trafficking-related crimes such as human trafficking, slavery and mediation in prostitution, remained as low as in the previous years.

The international pressures brought to an intensive legislative activity that slowly brought to the adoption of what is traditionally considered the core-stone legislation for fighting back corruption. However, the legislative framework is applied only in cases of low-level, administrative corruption and against the political opponents, and even there, the publicization and politicization of the process prevails[353]. The state-capture mechanisms we described in the first part of this section showed much bigger resistance. As Slavevski (2004), Naumov (2004), Ramadani (2004) underlined, the adopted rules and actions taken appears to be only another video in the government's media campaign and as such, they are not more than cosmetic changes incapable to produce effects. In a report of Transparentost nulta korupcija published in 2007, the politicization of the public sector, the political interference in economy, the financing of political parties, the shortcomings in the procedures for controlling the public procurement, the weakness in the functioning of the anti-corruption mechanisms

[352] Thus, while starting the procedures against the civil servants that failed to submit the property leaf, the commission failed to require the asset declaration from the chief of the secret service and prime minister's cousin Mijalkov. The media and civil sector exposed the case in public, but the commission did not undertake the measures prescribed by law (for the "Mijalkov case", Utrinski, 2007, see also Gaber-Damjanovska and Jovevska, 2007).

[353] In the interview undertaken during summer 2008, Taseva underlined how the fight against corruption in Macedonia is nothing more than a mere fiction, manipulation of the public opinion in order to hide the high-profile cases of corruption. The cases are always publicly initiated, covered with strong media campaign. Yet, most of the started cases are not prosecuted.

and the weakness of the institutions are still in the list of the identified causes of corruption, even after five years of rule adoption aiming to cope with these problems.

9.2.4. EU and the Fight against Corruption

As with some other dimensions as well, here again the international actors were crucial for pushing the problem of the corruption onto the agenda. In the interview with Taseva, the former president of the Commission for the Fight Against Corruption and current leader of Transparency in Macedonia, underlined that the entire process of the fight against corruption in Macedonia is an externally driven process where nothing is done unless required and supported from the IA. It is no surprise then that the fight against corruption in Macedonia began only after 2002, when the issue was identified by EU, USA, World Bank as a phenomenon hampering the rule of law in Macedonia. Since 2003, when the fight against corruption entered among the EU priorities in Macedonia, the pressure grew in time, to arrive to include the monitoring of the implementation of anti-corruption legislation among the 2007 key short-term priorities. On the other hand, the fight against organized crime represented a subject of constant pressures, being present from the first reports, gaining in time on the specificity of the norms promoted (see the table 3). The support to the issue was provided through the CARDS funds, by targeting directly the issue, as well as through the support of the reform of the judiciary and police.

Pressing for a more consistent fight against corruption, the EU also required the compliance with the recommendations issued by GRECO. The GRECO recommendations to Macedonia targeted a series of issues, requiring the adoption of the anti-corruption legislation, strengthening the agencies settled to fight back the corruption, increasing the accountability and transparency in the state institutions. In its third evaluation report, the GRECO stressed that Macedonia met almost all priorities, except those concerning the government officials' immunity and government's control over the prosecutor's office. However, we should underline that, seen the methodology of monitoring implied by GRECO (interviews with the state authorities), some of the requirements are considered implemented mainly due to the nominative existence of the rules in question, where no attention was paid on the de-facto implementation on the grounds.

Beside the EU, other international actors were also included in promoting the policies to fight back the corruption. We already underlined how the window of opportunity was opened by the International Crisis Group report issued in 2002 and the call to the donors "not to

finance the corruption" in Macedonia (Gaber-Damjanovska and Jovevska 2002). The World Bank and IMF were also particularly active in promoting the reforms aiming to strengthen the public procurement and introduce the efficient management of the public resources.

9.2.5. The Fight against Corruption and Organized Crime: Assessment

Similarly to the judicial system reform, the fight against corruption in Macedonia appears to be an externally driven reform. The issue was raised by the international NGO (International Crisis Group) and consequently arrived on the agenda of the International Actor that, prior to that moment, appeared concentrated on more security-driven issues (implementation of OFA) and more tolerant to the corruption scandals.

The report of the ICG pushed the issue not only to the domestic, but also on the international agenda, bringing to the increase of the IA's attention to the matter (the fight against corruption is included among the EU's SAA priorities only in 2003, after the ICG's criticisms). At the domestic level, the weakness of the civil society (active in monitoring and criticizing the government but excluded from the policy-making process, see the section on civic society) and the lack of independent institutions capable to monitor, control and make the government accountable for, brought to the lack of strong change agents to support the norm from within.

The strong international criticism threatening the government's legitimacy in the electorate, forced the political elite to undertake immediate actions, successfully pushing the issue onto the domestic agenda. The response was the almost immediate rule adoption, and the introduction of a series of measures for preventing corruption. This is one of the few examples where the social influence channel of action was successfully used to foster the rule adoption. In this case the social influence exercised by the international actors took the shape of "reinforcement by punishment with the use of social incentives" (the criticisms undermining the government's legitimacy). The social incentives, unlike what Schimmelfennig, Engert and Knobel (2003) argued, appear efficient in promoting the adoption of the anti-corruption legislation in Macedonia. It is possible to hypothesize that the efficiency of the social incentives as a mean of rule promotion differs as we pass from reward to "punishment" (de-legitimization or, more generally, criticizing). It is important to underline that the use of social incentives in this case does not bring the logic of appropriateness to prevail, rather it makes the costs and benefits deriving from the social incentives enter the calculation in a behaviour that remains guided by a logic of consequentiality.

It becomes clear that, when responding positively to the social incentives, the actors do not change their preferences when we observe the *content* and implementation of the legislative framework put in place. On the level of rule implementation, the personal interests of the decision makers and the great benefits to be derived from the corruption channels resulted in seriously obstructed rule implementation, a finding quite in line with the "controversial compliance" that we hypothesized to be the outcome of the "social influence". This is particularly clear for the period between the ICG report and EU 2003 inclusion of the anti-corruption measures among the issues requiring immediate action: the government's response on the ICG report arrived within one month in the shape of the adoption of the legislation with delayed implementation.

While a series of efforts is registered, the result of these efforts is incomplete. As no strong institutional change agents capable to further support the reform from within was found, the final result is fake compliance. The persistence of the international pressures since 2003, however, contributed to keep the anti-corruption policies on the agenda. Corruption is fought at the lower levels and in those cases involving the political opponents, while the government, at least until in office, is trying to escape the responsibility. Consequently, the highest resistance was found in those fields that concern the political corruption and state capture: the government showed to be reluctant in handing the control over to the judiciary, prosecutor office (achieved only in 2007, see the part on the judiciary), and to the bodies designed to fight the corruption, trying by all means to withdraw from the external control. The double standards in approaching the issue are well illustrated by the practice that all governments elected after 2002 adopted the fight against corruption as their official priority, but at the same time failed to ensure that, at least in the lines of the government, the corruption scandals are avoided.

9.3. A Comparative Assessment

Bearing the difficult heritage of the Nineties, both Macedonia and Serbia were and still are facing the serious problem of corruption and organized crime. The causes that brought to the spreading of corruption in the two countries are similar: the economic crisis, the international embargo, the large public sector and state interventionism in the economy, the delay in the economic reforms, the war that shook the Balkans and the spread of the nationalism all being

factors that favoured the development of corruption in the two countries. Both countries also represented a series of similar mechanisms: the state capture is present in both cases, where on the one hand the politicization of the state institution strengthens the position of the narrow party leadership, while on the other the financing of the political parties and the links between the party leadership and the economic elite allowed the business elite's access to the decision-making process.

Some differences are yet worth to mention. On the side of the causes, in Serbia's case the ten-year long Milošević's regime, characterized by systemic, centralized corruption, played an important role in the overall degradation of the institutions and society. But this, while it contributed to the penetration of corruption to all segments of society, it also created a specific positive impact for the fight against corruption once the regime was overthrown, as the change of the regime provoked a temporary shock in the existing corruptive mechanisms. The only case of a relatively serious fight against corruption and the truly dedicated decision makers are registered in Serbia immediately after the October 2000, when the fight against corruption, for the new elite, had the meaning of fight against the old ruling elite. However, this favourable context did not last too long. Very soon the creation of the links between the political and economic elite made the incentives of the new elite to face the issue decrease. Moreover, the polarization of the political system, the centrifugal party competition and the establishment of the peripheral turnover made the system rather stable. The ruling elite, stable on its position, was not motivated to introduce the mechanisms of accountability.

Another important difference between the two countries concerns *the role* of corruption. In Macedonia's case, corruption played an important role in maintaining the peace in the country during the '90s, and, it is possible to argue, this might still be the case. Some practices linked with corruption still appear closely linked with the inter-ethnic relations. Very often, nationalism is used to cover the dislocation and untransparency of the decision-making process, covering the deal-making behind closed doors. In the chapter on the police reform we will see how nationalism was often used to cover the members of the Albanian organized crime gangs, while in the part on the administrative capacity we underlined how the principle of the equal representation directly hampered the merit-based recruitment in the lines of bureaucracy. Seen what was at stake (position in the office allowing access to the resources deriving from corruption), the strategy used by the Albanian ethnic parties, both in their intra-group struggle for power (nationalism) and in bargaining with their Macedonian counter-parts,

we might wonder what might happen if the corruptive mechanisms keeping the Macedonian and Albanian elite together broke.

When we turn to the process of the fight against corruption, we register a much more salient role of the IA in Macedonia's case than in Serbia. As we saw, the successful use of the social influence strategy in Macedonia brought the issue onto the agenda, contributing to calm the deficiency deriving from the weak civil sector in the country and the lack of strong domestic change agents. In a few years time, in both countries the legislative framework for the fight against corruption was in place. However, as we underlined in the introduction to this chapter, the particularity of the issue is such that the relatively smooth rule adoption is followed by difficult and obstructed implementation, registered as the final outcome in both countries studied. As already mentioned above, the only successful case of fight against corruption was registered in Serbia immediately after the change of the regime, when the new ruling elite played the role of an important change agent, testifying the importance of the political will for a successful change.

Table 1: "The fight against corruption in Serbia and Macedonia, comparative assessment".

	SERBIA		MACEDONIA
	2001-2002	2003-	
IA Conditionality:	Absent.	Present weak.	Present weak.
IA Social influence:	Irrelevant.	Present.	Present.
IA Social learning:	Present.	Present.	Present.
Domestic ChA:	Government, civil society.	Civil society.	Civil society.
Type of the issue:	Salience.	Salience.	Salience.
Main line of the conflict:	Ancient regime vs. New elite.	Rulers vs. Ruled.	Rulers vs. Ruled.
Main beneficiaries of the status quo:	Old ruling elite.	Ruling elite.	Ruling elite.
Main beneficiaries of the change:	New ruling elite, citizens.	Citizens.	Citizens.
Stability/fluidity of political environment:	Fluid.	stable.	Fluid.
Outcome:	Rule adoption. Intention to comply.	Rule adoption. Fake compliance.	Rule adoption. Fake compliance.

APPENDIX

Table 1: "EU priorities and the fight against organized crime in Serbia".

2003	Elaboration and implementation of an Action Plan against organized crime, particularly the trafficking of human beings. Finalization and implementation of National Strategies against drug trafficking.
2004	**Short-term priorities:** Strengthen inter-agency cooperation within the Republic and formalize inter-Republican cooperation. Develop the capacity to seize assets. Strengthen criminal intelligence. Start implementing the specific action oriented measures that were agreed at the JHA ministerial meeting in November 2003. Take the necessary steps to prepare for the conclusion of a cooperation agreement with Europol. Increase capacity to fight against drug trafficking and develop a national drugs strategy in line with the EU Drugs Strategy and Action Plan on Drugs. Strengthen fight against trafficking of human beings, including by providing adequate assistance and protection to the victims.
2006	**Short-term priorities**: Adopt the legislation and develop the capacity to seize assets. Strengthen criminal intelligence. Adopt legislation on the protection of personal data and take the necessary steps to prepare for the conclusion of a cooperation agreement with Europol. Strengthen the fight against the trafficking of human beings, including the provision of adequate assistance and protection of victims.
2007	**Short-term priorities**: Adopt outstanding legislation, develop the capacity to seize assets, implement a national strategy against organised crime and strengthen criminal intelligence. Continue the fight against trafficking of human beings, including implementation of the strategy for prevention of trafficking and provision of adequate assistance and protection to victims.-Increase the efficiency of international cooperation and implementation of the relevant international conventions on terrorism.-Improve cooperation and the exchange of information between all branches of the security services and with other states and prevent financing and preparation of acts of terrorism.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia.

Table 2: "EU priorities and the fight against corruption in Serbia".

2002	Action should be taken against corrupt elements in the system.
2003	Firm action against corrupt elements in the system.
2004	**Short-term priorities**: Prepare a comprehensive anti-corruption strategy in line with Council of Europe standards and adopt Law on Conflict of Interests.
2006	**Short-term priorities**: Fully implement the laws on conflict of interests. Adopt and implement a comprehensive anti-corruption strategy and subsequently detailed Action Plans, notably through establishing a competent body for implementation.
2007	**Key priorities**: Set up the fight against corruption at all levels and develop a comprehensive public system of financial control to increase transparency and accountability in use of public finances. **Short-term priorities**: Implement the action plan on the anti-corruption strategy and establish an independent and effective anti corruption agency. Ratify international conventions against corruption. Further clarify and enforce regulations related to prevention of conflict of interests, in line with international standards. Develop and implement a transparent system of declaration of assets of public officials.
2008	**Key priorities**: Set up the fight against corruption at all levels and develop a comprehensive public system of financial control to increase transparency and accountability in use of public finances. **Short-term priorities**: Implement the action plan on the anti-corruption strategy and establish an independent and effective anti corruption agency. Ratify international conventions against corruption. Further clarify and enforce regulations related to prevention of conflict of interests, in line with international standards. Develop and implement a transparent system of declaration of assets of public officials.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia.

Table 3: "EU priorities and the fight against organized crime in Macedonia".

2002	Strengthen the fight against organised crime; including by strengthening co-operation between different law enforcement bodies. Introduce legislation on the protection of personal data and set up the independent Agency charged with its enforcement.
2003	Strengthen the fight against organised crime, including by establishing comprehensive plans to prevent and fight against organised crime and corruption, taking decisive actions to demonstrate that crime does not pay, strengthening co-operation between different law enforcement bodies, developing crime intelligence and reliable statistical data, increasing administration capacity. Address the obstacles that forbid the use of any kind of special investigative techniques. Establish and ensure proper implementation of a national Plan against Drugs. Introduce legislation on the protection of personal data and set up an independent Agency charged with its enforcement.
2004	**Short-term priorities:** Pursue the conclusion of agreements with neighbouring countries, including on cross border cooperation as regards the fight against organised crime, trafficking and smuggling, judicial cooperation, border management, environment and energy, and ensure their effective implementation. Promote cooperation with Interpol and other international law enforcement organization, in particular through improved consultation of their databases. Implement the action oriented measures that were adopted by the Government and presented at the EU-western Balkans JHA ministerial meeting of 28 November 2003. Complete the ratification of the 2002 UN Convention on Organised Crime and its related protocols on small arms, trafficking in human beings and smuggling of migrants, and ensure implementation. Enhance coordination between law-enforcement bodies involved in fighting organised crime. Enhance intelligence and risk analysis and set up a central criminal intelligence unit, working in cooperation with all law enforcement agencies. Adopt the legislative changes needed to allow the use of special investigative means. Develop witness protection programmes. Increase capacity to fight against drug trafficking. Develop a national drugs strategy in line with the EU Drugs Strategy and Action Plan on Drugs. Clarify the respective roles of the Directorate against Money Laundering (DML) and of the Financial Police and upgrade the DML to the level of a financial intelligence unit in line with EU standards. Take the necessary steps to prepare for the conclusion of an agreement with Europol. Increase international cooperation and implement relevant international conventions on terrorism. Improve cooperation and exchange of information between police and intelligence services within the State and with other States. Prevent the financing and preparation of acts of terrorism.
2006	**Short-term priorities:** Conclude and implement agreements with neighbouring countries, notably on free trade, cross-border cooperation, fight against organised crime, trafficking and smuggling, judicial cooperation, border management, environment, transport and energy. Pursue the implementation of the set of action-oriented measures for the fight against organised crime. Create an integrated intelligence system for inter-agency use in the fight against organised crime, including trafficking in human beings, arms and drugs. Develop a national strategy on drugs in line with the EU Drugs Strategy for 2005 to 2012 and well-structured unit specialised in undercover policing and ensure training on intelligence-led policing. Ensure adequate resources for witness protection. Strengthen the capacity to investigate computer crimes.
2007	**Short-term priorities:** Foster cooperation with neighbouring countries and ensure effective implementation, notably on cross border cooperation, the fight against organised crime, trafficking and smuggling, judicial cooperation, border management, readmission and the environment. Further intensify the fight against organised crime, notably by making better use of special investigative measures and by promptly issuing and following up international arrest warrants (including for computer crime, with a special focus on child pornography), and create an integrated intelligence system for inter-agency use in the fight against organised crime, including trafficking in human beings, arms and drugs. Strengthen efforts to implement the national action plan to combat human trafficking and the capacity to investigate computer crime.
2008	**Short-term priorities:** Foster cooperation with neighbouring countries and ensure effective implementation, notably on cross border cooperation, the fight against organised crime, trafficking and smuggling, judicial cooperation, border management, readmission and the environment. Further intensify the fight against organised crime, notably by making better use of special investigative measures and by promptly issuing and following up international arrest warrants (including for computer crime, with a special focus on child pornography), and create an integrated intelligence system for inter-agency use in the fight against organised crime, including trafficking in human beings, arms and drugs. Strengthen efforts to implement the national action plan to combat human trafficking and the capacity to investigate computer crime.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia.

Table 4: "EU priorities and the fight against corruption in Macedonia".

2003	Step up the fight against corruption by adopting and implementing a comprehensive strategy, in line with international and European standards and practices (including the setting up of appropriate bodies to prevent, investigate and prosecute corruption, increased transparency and objectivity in various procedures performed by the executive bodies, clarity in financing of political parties, full implementation of public procurement legislation).
2004	**Short-term priorities:** Implement the strategy for the fight against corruption. Increase institutional capacity to investigate and prosecute corruption. Improve coordination and ensure cooperation between the law enforcement agencies and the State Commission on the Prevention of Corruption. Improve exchange of intelligence on corruption related cases between the services in charge of identifying, investigating and prosecuting established cases. Strengthen and implement the rules applying to officials' declaration of assets, conflict of interest, transparency in public procurement and internal and external control of the administration. Adopt appropriate legislation on financing of political parties.
2006	**Short-term priorities:** Fully implement the recommendations of the Group of States against Corruption (GRECO). Improve transparency in public decisions and in the management of state assets (including state owned land, concessions and public procurement). Implement the recommendations made by the State Commission for the Prevention of Corruption and further improve coordination and cooperation between the law enforcement agencies. Review the discretionary rights of certain public officials and adopt clear rules relating to conflict of interest. Ensure the implementation of the legislation adopted on the financing of political parties and on control over the assets of officials and impose effective sanctions in case of infringements. Identify the extent of the corruption phenomenon in key areas of public life in order that effective preventive and detection measures can be put in place. Enhance the capacity of police investigators and prosecutors to deal with corruption cases. Ensure adequate coordination between the State Commission for the Prevention of Corruption and the State Prosecutor.
2007	**Key short-term priority:** Establish a sustained track record on implementation of anti-corruption legislation. **Short-term priorities:** Ensure an adequate follow-up to the recommendations made by the State Commission Against Corruption and the State Audit Office. Implement fully the recommendations made by the Group of States against Corruption (GRECO). Strengthen the administrative capacity needed to implement the rules adopted on the financing of political parties and electoral campaigns. Impose effective sanctions in case of infringements. Follow up the reviews carried out of discretionary rights of certain public officials. Ensure full implementation of the law on public access to information.
2008	**Key short-term priority:** Establish a sustained track record on implementation of anti-corruption legislation. **Short-term priorities:** Ensure an adequate follow-up to the recommendations made by the State Commission Against Corruption and the State Audit Office. Implement fully the recommendations made by the Group of States against Corruption (GRECO). Strengthen the administrative capacity needed to implement the rules adopted on the financing of political parties and electoral campaigns. Impose effective sanctions in case of infringements. Follow up the reviews carried out of discretionary rights of certain public officials. Ensure full implementation of the law on public access to information. Further strengthen cooperation among institutions.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia.

Table 5: "EU assistance to the fight against corruption and organized crime in Serbia" (for the resources fostering the police and judiciary reform, see the section on judiciary and on security).

2002	€ 7 millions	Assistance to public finance reforms (€7 million).	
2003	€ 16 millions	Assistance to public finance reforms (€16 million).	
2005	€ 8 millions (6.5 + 1.5)	Capacity Building and strengthening of the Organised Crime Directorate Fight against economic crime in the Republic of Serbia (€1.5 millions).	The OCD must have legally based checks and balances, with regard to special investigative measures, that allow a proper balance between the police/OCD's need to investigate organised crime activities and simultaneously protect the privacy of citizens not under justified investigation.
2006	€ 3.5. millions (1.5+2)	Supreme Audit Institution (€1.5 million) + Technical assistance to the Commission for the Protection of Competition (€2 millions).	Prior to the drafting of the Twinning Fiche for the State Audit Support an Implementation agreement will be signed with Parliament to ensure the provision of appropriate resources to run the State Audit office and absorb institutional support. This will include the appointment of a senior Parliamentarian counterpart to work with EAR and the successful Twinner. An implementation agreement will be signed between EAR and the Tax administration/Ministry of Finance guaranteeing the readiness of installation premises and related actions for the printing facility before any procurement actions are carried out. An implementation agreement will be signed between the European Commission and the Ministry of International and Economic Relations detailing responsibilities for the introduction of DIS structures and the programming/management, implementation of IPA.
2007	2 millions	Support to the public procurement office.	Existing legislation does not match completely the adequate criteria requested for implementation of the project. Public Procurement Office, Commission for Protection of Tenderers' Rights and Public procurement system Group of the Ministry of Finance do not dispose with enough number of employees, which jeopardizes the project implementation. The project will not be supported unless all these preconditions for its implementation are fulfilled. Therefore, the Government needs to continue providing full support to the Public Procurement Office and its activities, empower it by giving it more responsibilities and more staff.
Total	36.5 millions		

Source: European Agency for reconstruction report 2006, IPE documents 2007.

Table 6: "EU assistance to the fight against corruption and organized crime in Macedonia" (for the resources fostering the police and judiciary reform, see the section on judiciary and on security).

2002	€ 1 million (0.7 + 0.3)	Combating money laundering, phase 1. Capacity building for combating drugs-related criminal activity.	
2003	€3.5 millions (1 + 1 + 1.5)	Equipment supply to the Directorate for Money Laundering Prevention. Technical assistance in the fight against drugs. Establishment of a Public Procurement Bureau.	
2004	€ 1 million	Technical Assistance to the Ministry of Finance for development of internal audit.	
2005	€ 2 millions (1.5 + 0.5)	Combating money laundering (phase II). Strengthening capacity to combat organised crime and terrorism-Equipment supply to Police Special Tasks Unit.	National authorities must respond adequately to the advisory input of the preceding technical assistance project in support of the Directorate for Money Laundering Prevention. There must be a quantifiable progress in the amount of secondary legislation and procedures adopted. Reporting systems and procedures, to be implemented under the related CARDS 2003 project, must be installed and training completed. It is imperative that there is a continued political will on the part of the national authorities to support implementation of the Police Reform strategy and that the Government allocates sufficient resources for this purpose.
2006	€ 1.2 millions	Public internal financial control.	Full commitment by the beneficiary country authorities at all phases of preparing for decentralised management and establishment of the main principles of the chapter 32 public internal financial control.
Total 2001-2007	8.7 millions		

Source: European Agency for reconstruction report 2006, IPE documents 2007.

Table 7: "Macedonian Anti-Corruption Commission budget share".

(in thousands of denars)

Year	Budget for commission	State budget	Share
2004	8.440	66.666.000	0.0127%
2005	15.235	66.538.469	0.0228%
2006	13.223	81.749.000	0.0127%
2007	18.739	79.522.497	0.0236%
2008	20.485	89.397.520	0.0229%

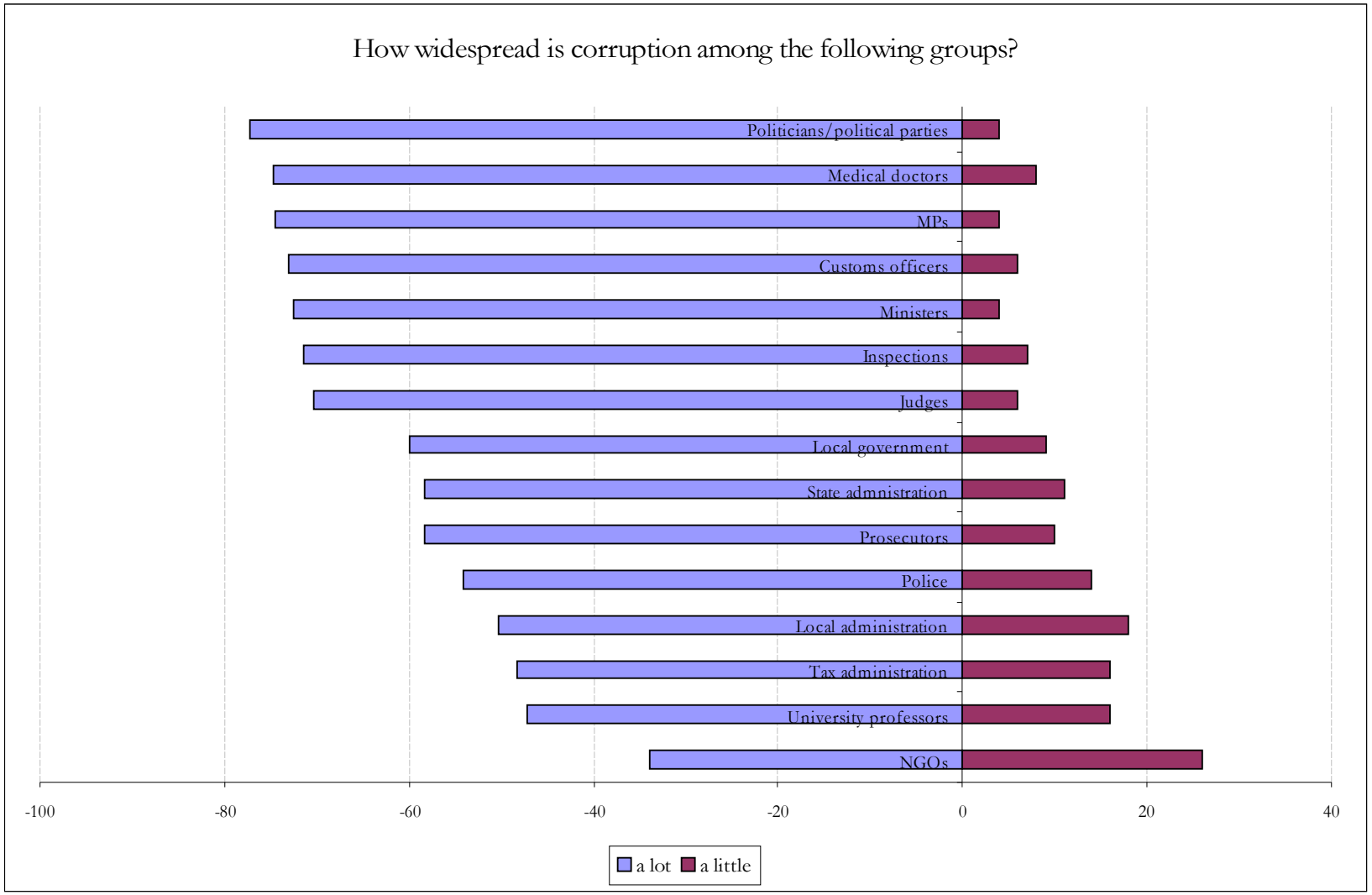
Source of data: Law on State Budget 2002. 2003, 2004, 2005, 2006, 2007, 2008, Sluzbeni Vsnik na Republika Makedonija.

Table 8: "The budget of Serbian Council for the Fight Against Corruption".

Year	Budget	Council for the Fight Against Corruption budget in dinars	Council for the Fight Against Corruption budget share
2002	217.379.629.540	-	
2003	318.691.919.000	30.000.000	0. 0094%
2004	362.045.252.000	9.850.000	0. 0027%
2005	429.764.926.000	12.460.000	0. 0028%
2006	548.405.821.000	15.847.000	0. 0028%
2007	646.466.666.100	13.733.000	0. 0021%

Source of data: Law on State Budget 2002. 2003, 2004, 2005, 2006, 2007, 2008, Sluzbeni List Republike Srbije.

Figure 1: "The widespread of the corruption in Serbia".



Source Pešić, 2006, p. 28.

Table 9: "Anti-corruption measures in Serbia and Macedonia according to the legislation in force" (author's elaboration).

Special institutions formed to fight the corruption

	Serbia	Macedonia
Agency:	2001 Council for the Fight Against Corruption.	2002 Anti-corruption commission. 2004 law amended, financing from budget.
Functions:	Consultative, advise, law proposal, monitoring of implementation.	Corruption prevention among the authorities, conducting the measures for preventing conflict of interest, rule initiative and consultative role in the matters linked to the fight against corruption, initiative of the process of investigation and prosecution in the cases of corruption.
Budget (in media):	0.00398% of the state budget.	0.01894%
Role effectively exercised:	Strong change agent.	State institution.
Relation with government:	Strongly conflictive.	Controlled by government.

Introduction of the corruption as a criminal offence

	Serbia	Macedonia
Year:	2002.	
Status:	Implemented only for the low rank cases of corruption.	

Law on Conflict of Interest

	Seria	Macedonia
Adopted:	2004.	2002 (part of the law on the fight against corruption). 2007 law adopted.
Shortcomings:	Omitted from compliance judiciary, local officials. Allowed the MPs the participation in the managerial boards of public companies. Limited access to the information about the assets of public officials. Complicated procedure for election of the council for prevention of the conflict of interest, too limited size of the council and lack of financial resources.	2002: Unclear provisions, necessity to introduce the more clear, comprehensive legislative framework by regulating separately the matter. The anti-corruption commission was supposed to implement the law, which only further contributed to overburden the functioning of the commission.
Implementation:	Very difficult.	Partial, selective.

Law on financing political parties

	Serbia	Macedonia
Adopted:	2003.	2004, amended 2006.
Shortcomings:	Unclear division of competencies between the bodies designed to implement the law (Parliamentary committee and RIK). Inadequate financial resources. Unclear procedures.	The bodies monitoring compliance are under the strong political influence.
Implementation:	Almost absent.	Selective implementation, the politicization in the implementation (only the opposition's finances are controlled).

National strategy for the fight against corruption

	Serbia	Macedonia
Adopted:	2005.	2003.

Law on the Stat Audit Institution

	Serbia	Macedonia
Adopted:	2005.	1997.
Shortcomings:	Lack of independency, too large competencies.	Lack of independence.
Implementation:	Only recently. Body formed only in 2007, still lacking basic infrastructure.	Difficult (obstruction in functioning).

Law on public procurement

	Serbia	Macedonia
Adopted:	2002.	1998 amended 2002, 2003, 2005.
Shortcomings:	Lack of political independence, not covering all phases of the process, since 2005 police excluded compliance.	
Implementation:	Delay in settling the relevant institutions, the size of personnel inadequate to come with the workload.	

Table 10: "Factors favouring corruption in Serbia and Macedonia".

Factors favouring corruption	Macedonia	Serbia
Large public sector.	Present.	Present.
Weakness or absence of the parties promoting the economic transition.	Present.	Present.
Delay of the economic reforms.	Partially present.	Present.
State intervention in the economy (state regulations).	Partially present (since 1995 Macedonia enters the arrangements with IMF and WB, which promotes the reforms).	Present.
Overlapping between the political and economic elite.	Present.	Present.
International embargo.	Present.	Present.
War.	Present.	Present.
Nationalism.	Present.	Present.
Inter-ethnic conflict threatening country's security.	Present.	Partially present (while Serbia was involved in almost all inter-ethnic conflicts in Balkans, the territorial concentration of the Albanians in Kosovo and their relative weakness resulted in a situation where the conflict threatened only the peripheral parts of Serbia, never the central part or entire country as it was the case in Macedonia).
"Exchange" as the instrument of the inter-ethnic peace.	Present.	No.
Authoritarian regime during the 90ties.	No.	Present.
Party system building coinciding with state building.	Present.	Partially present (differently from Macedonia, Serbia had already existed as the independent state to represent the basis for the nation and state building process).
lack of rule of law, weak state, lack of accountability mechanisms.	Present.	Present.
Strong security forces under the command of the regime.	No.	Present.
Overburdened, complicated, un-transparent, un-harmonized legislative framework and procedures giving large space to the bureaucrat's arbitrary.	Present.	Present.
Hampered electoral accountability.	No.	Partially present (the type of party system producing the peripheral turnover exercise limitative effect on the electoral accountability).

Table 11: "Mechanisms of corruption in Serbia and Macedonia".

Mechanisms of corruption	Macedonia	Serbia
Politicization of the judiciary:	Present (shortcomings of implementation of the norms).	Present (shortcomings in the legislative framework).
Politicization of the administration:	Present (shortcomings in the legislative framework).	Present (shortcomings in the legislative framework).
Party control over the deputies:	Present weak (inner parties relations).	Present strong (constitutionally guaranteed).
Un-transparent decision-making process due to:	Use of nationalistic rhetorics.	lack of mechanisms of accountability, feudalization of government.
Log-rolling exchanges:	Inter-ethnic.	Inter-party .
Un-transparent financing of political parties:	Present (lack of implementation of the norms).	Present (shortcomings in the legislative framework).
Conflict of interest:	Present (lack of implementation of the norms).	Present (shortcomings in the legislative framework).

Table 12: "Settling the fight-against corruption and organized crime legislation in Serbia (2001 - 2002; 2004-), factors on the international level".

	Law on fight against corruption, inclusion of corruption as a criminal defense, law on public procurement (2001-2002).	Law on Conflict of Interest, Law on State Audit, National strategy (2004-).
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	No.	No.
Was the issue part of the EU ***key*** short-term priorities?	-	Yes.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	-	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.	Yes.
Amount of the EU financial support to the reform in general:	7 million (2001-2002).	36.5 million (2001 - 2007).
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	1,27% of the total EU assistance to Serbia for 2000-2002.	2,82% of the total EU assistance to Serbia for 2000-2007.
Reform perceived by the IA as:	Necessary for the rule of law and good governance.	Necessary for the rule of law and good governance.
The main concern guiding IA's intervention in the field:	Democratization.	Democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X	X
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.
Were the recommendations made by the IA accepted?	Yes.	Partial.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	No.	No.
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	No.	No.

Table 13: "Explanatory factors for settling the fight-against corruption and organized crime legislation in Serbia (2001 - 2002; 2004-), domestic level".

	Law on fight against corruption, inclusion of corruption as a criminal defense, law on public procurement (2001-2002)	Law on Conflict of Interest, Law on State Audit, National strategy (2004 -).
Domestic input for the change:	Present, strong criticism of the public opinion.	Present.
Domestic actors pushing for the reform:	Public opinion, civil society, government, council.	Public opinion, civil society, council.
Level of conflictuality of the issue:	Apparently low (salience issue), yet, strong opposition of the interested.	Apparently low (salience issue), yet, strong interest of the ruling elite.
Type of the conflict and main line of the conflict:	Old vs. new elite.	Rulers vs. ruled.
Did the issue concern the deep divisions in society?	X	X
Type of the issue (salience - positional):	Salience.	Salience.
The main beneficiaries of the status quo:	Ruling elite (in a measure in which it succeed using corruption for own enrichment), old elite (in a measure in which succeed escaping the punishment).	Ruling elite, political parties.
The main beneficiaries of the change:	Citizens.	Citizens.
Is the existing status quo strongly delegitimized by all relevant actors?	Yes, apparently (yet, the beneficiaries of the status quo.	
Two or more alternative solutions present?	No.	No.
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.	stable.

Table 14: "Settling the fight-against corruption and organized crime legislation in Serbia (2001 - 2002; 2004-), outcomes".

	Law on fight against corruption, inclusion of corruption as a criminal defense, law on public procurement (2001-2002).	Law on Conflict of Interest, Law on State Audit, National strategy (2004 -)
The main deficiency in the adopted legislation:	Legislative framework is generally good, lack of implementation.	Loopholes, shortcomings in the legislation annulling its effects, lack of implementation.
The main beneficiaries of such deficiencies:	Ruling elite, political parties.	Ruling elite, political parties.
The status (2008):	Fake compliance.	Fake compliance.
The EU comment in the 2008 report:		Overall, corruption continues to be widespread and to pose a serious problem in Serbia. Despite greater public awareness of the issue and newly adopted legislation, major problems remain. These include the lack of sufficiently independent and efficient oversight bodies in core areas such as party financing, conflict of interest, public procurement and privatization.

Table 15: "Explanatory factors for settling the fight-against corruption and organized crime legislation in Macedonia, international level".

Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	X
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	Yes.
Was the issue part of the EU ***key*** short-term priorities?	Yes.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	Yes.
Amount of the EU financial support to the reform in general:	8,7
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	2.83% of the total EU assistance to Macedonia for the period 2000-2007.
Reform perceived by the IA as:	Necessary for the rule of law and good governance.
The main concern guiding IA's intervention in the field:	Democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.
Were the recommendations made by the IA accepted?	Partially.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	Yes.
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	No.

Table 16: "Explanatory factors for settling the fight-against corruption and organized crime legislation in Macedonia, domestic level".

Domestic input for the change:	X
Domestic actors pushing for the reform:	Civil sector, weak.
Level of conflictuality of the issue:	Apparently low (salience issue), yet, strong interest of the ruling elite.
Type of the conflict and main line of the conflict:	Rulers vs. ruled.
Did the issue concern the deep divisions in society?	X
Type of the issue (salience - positional):	Salience.
The main beneficiaries of the status quo:	Ruling elite, political parties.
The main beneficiaries of the change:	Citizens.
Is the existing status quo strongly delegitimized by all relevant actors?	Yes, apparently (yet, the beneficiaries of the status quo.
Two or more alternative solutions present?	No.
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.

Table 17: “Settling the fight-against corruption and organized crime legislation in Macedonia, outcomes”.

The procedure of law drafting:	-
The main deficiency in the adopted legislation:	Legislative framework is generally good, lack of implementation.
The main beneficiaries of such deficiencies:	Ruling elite, political parties.
The status (2008):	Fake compliance.
The EU comment in the 2008 report:	Some further progress has been made in implementing anti-corruption policy. The legal and institutional framework has been strengthened and some further results have been achieved in implementation. However, corruption remains a particularly serious problem. Further steps are necessary, in particular as regards implementing provisions on financing of political parties and election campaigns. The country partially meets its priorities in this area.

10. FREEDOM OF THE MEDIA

"Eccezion fatta per pochi solitari eroi, chi teme di dire
quello che pensa, finisce per non pensare quel che non può dire"
(Sartori, 1993, p. 69).

The freedom of the media is one of the fundamental prerogatives of democracy. In the very definition of democracy, the independence of the media and alternative sources of information are considered a necessary key element for the citizens to be allowed to exercise their other political rights. Without the freedom of expression, the political pluralism is limited, citizens cannot express their preferences and influence the choice of policy, nor can they exercise any control over the government through criticism. At the same time, the lack of alternative sources of information limits the citizens' capacity to make their preferences as they are not able to make an informed decision, thus limiting their electoral rights. It also makes it difficult for them to exercise control over the ruling elite, as they lack impartial information about the government's actions.[354]

The information and the control over the information are considered by the students of power relations as one of the resources of power. Thus, Laswell and Kaplan (1950) include information (knowledge) as one of the values giving basis to the power, while Stoppino (2001) includes knowledge and beliefs as one of the four domains upon which the power can be exercised. Persuasion and manipulation of the information are considered by Stoppino particular manners of exercising power through the influence of the subject's beliefs and knowledge. Being an important resource, the control over the information (and the freedom of the media, expression, right to alternative sources of information or lack thereof, which are linked to such control) represents the core of the struggle for power, both among different elites trying to acquire and control the information, and, during the process of democratization, between the ruling elite and citizens/group/political actors pushing for democracy. Allowing and developing the freedom of expression and alternative sources of

[354] On the freedom of speech and freedom of information as a part of the minimal set of political institutions necessary for modern representative democratic government to exist see Dahl, 1999.

information is a process in which the citizens acquire a significant portion of power over the ruling elite, and as such represents the core of the democratization process[355].

Being the core of the power relations, the divulgation of the freedom of expression and development of the freedom of media represent one of the most difficult changes to push ahead. When (as it happened to be in Macedonia and Serbia in the fall of communistic regime) the influence and limitation of the freedom of speech is combined with the state ownership of the all existing media, the process is particularly difficult as the ruling elite possesses several means to maintain the control over the media.

In the following paragraphs we will analyze the process of developing the legislative framework for the protection of the media freedom in the two countries, paying particular attention to the legislation concerning the broadcasting, the public information, the access to the information, decriminalization of slander and undue political and economical influence over the media. As we will see, in both Serbia and Macedonia the development of the media freedom met some difficulties, first of all in the implementation of the rules, resulting in a paradox where the rather standardized legislative frameworks are combined with the low performance in this dimension.

10.1. Serbia

10.1.1. Media and Freedom of Expression

The liberalization and pluralism of the media were established in Serbia for the first time in the beginning of the '90s, when the constitution granted the freedom of speech, the right to publish newspapers, the right to the plurality of sources of information (art 46) and the right to the private property and private business (this way allowing the organization of non-state owned firms and media enterprises). Very soon several newspapers, radio and, slowly, private TV stations were born. However, such "plurality" on the paper was seriously undermined in practice. The ruling SPS inherited the control over the state owned media (with an already well-developed infrastructure), completely monopolizing the biggest channels of information. Furthermore, through intimidations, regulations and financial means the private media were

[355] The acceptance of the political pluralism is considered one of the fundamental steps towards democratization. For Dahl this is one of the two steps bringing to the development of democracy (the other being universal suffrage), while for Rokkan it is the first of the four thresholds of democracy. The freedom to contestation and political pluralism are strictly linked to the freedom of expression.

kept under control. As the opposition to the regime grew, the pressure over the independent media and limitations of the freedom of speech grew as well, resulting, in 1998, in the adoption of the draconic Law on Public Information, establishing the means to intimidate and punish the media criticizing the regime[356]. In order to protect the citizens from the "manipulation", the disinformation was criminated, this way allowing the regime to arbitrary close any media that expressed criticisms against the regime (usually classified as "disinformation", and "untruths")[357]. The censorship was introduced and the fines for the non-compliance with the law are set to unreasonable amounts for the journalists' and editors' low revenues.

After the regime change, the situation significantly improved as the 1998 Law on Public Information was put out of force. However, even though significantly better if compared to the last years of Milošević's regime, both the media independence and professionalism are still causing serious concern, the intimidation, pressure, corruption, control, conditionality, coercion, all being used by the politicians in order to influence the media. The reports of the Belgrade center for human rights, the Helsinki committee, OSCE, Media center, ANEM (a network of independent media whose role was crucial in the Milošević era), the journalists association, all continue to underline the pressures the media are exposed to, and the lack of ethics in the work of many, some even nationally widespread, media[358]. While the politicians are using all possible channels of influence (the control of the financing and ownership of the media but also open threats, physical assaults and violence)[359], the journalists are often violating human rights and the basic professional ethics (from the occasional engagements in political parties and corruption, to the publication of made-up scandals, use of PR materials and speeches of hate, in some cases even Nazi propaganda and call for violence)[360]. Such

[356] See also Dallara, 2008.

[357] See Matić 2002.

[358] The most recent report issued on the subject is the Country Report as part of the Media Sustainibility index, 2008.

[359] In the pool undertaken by Strategic Marketing Research for the association of the independent media NUNS, in 2007 more than 40% of the Serbian journalists considered their job dangerous in terms of fearing for their own lives. About 80% of the journalists believed that journalism in Serbia is strongly politicized, 95% believed that the media are under control (censorship), 37% of which believed that the censorship is largely widespread, 44% believed that it is widespread, while 14% believed that it is only used occasionally and on specific topics). According to the journalists, censorship is mainly undertaken by the politicians (70%) or tycoons (59% of responses), and is mainly directed to cover for the economic/financial malversations of the politicians (78%) or tycoons (68%). For examples of political influence over the journalists see Spaić, 2005.

[360] Thus in the same research undertaken by ANEM, 64% of the interviewed journalists agreed with the statement that "many journalists in Serbia are used to putting their profession to the service of the political parties", while 45% believed that "Many journalists in Serbia are linked with the organized crime and protect the organized crime interests in their reporting" (only 22% did not agree with this statement). In the Media Sustainibility Index the professionalism is the indicator on which Serbia got the lowest score.

situation is strongly favored by the difficult financial situation of the journalists and the insecurity of their position. The analysis of Serbia's scoring in the Media Sustainability Index and Freedom House clearly shows that the professional journalism is the weakest point (Serbia's lowest score on the MSI is for the professional journalism, 1.91, which significantly pushes the total score down to 2.21) and that the main cause for this problem is to be searched in the political environment (according to the Freedom House data for 2007, the Press in Serbia is considered partially free, the most critical dimension being "political environment", which makes the score rocket up to 45 points).

The adequate legislative framework is a first step in the process of establishing free media and penalizing the political pressures. As we will see, the legislative framework in place, not unlike other fields we analyzed, shows some serious shortcomings and, most importantly, is not properly implemented. The violations of the freedom of speech and the attacks on the journalists perceived as "not enough patriotic in their reporting on Kosovo issues" in the second half of 2007, supported by some members of the government, are the final exhalation of what was the more general direction in the last years[361].

10.1.2. Changes Introduced

Even though one of the first steps undertaken after the change of regime was to abolish the 1998 law, the situation after the "democratic revolution" was far from being democratic in substance. The media previously controlled by Milošević's regime, after their "liberation" (in the state owned media, "liberation" meaning a change in the managerial staff, while in the private media, "liberation" meaning a change in the political orientation of the media owner) continued their uncritical, partisan reporting, this time favoring the new ruling elite. Starting from the position that considered anyone against the new democratic government and any critics towards the reforms actually the product of the ancient-regime supporters, the new Đinđić's government maintained the control over the media by establishing the government's information bureau, which became an instrument of control, and, when necessary, even intimidation of the media[362]. Very soon the new ruling elite started to enjoy the privileges deriving from the control over the media, which seriously influenced their calculation of costs and balances when approaching the media legislation.

[361] The deterioration of the situation in 2007 is well depicted in Serbia's score in the Reporters Without Borders index, where there is a significant drop in the ranking from 2006 to 2007.

[362] See Cvijanović, 2002.

It is easily understandable that such situation brought to the adoption of rules only partially complying with the international standards, to delays and shortcomings in the process of implementation and to the lack of effective changes on the grounds. Three pieces of legislation are important to understand the (lack of) development of the free media in Serbia: the Law on the Broadcasting, the Law on Public Information and the Law on Free Access to Information.

The Law on the Broadcasting was adopted in 2002, after strong pressures coming both from internal change agents (media, civil sector) and from the international actors. The drafting process was undertaken in cooperation with the international actors and national NGOs, with long public debate, in search for a broad support and legitimization of the law. However, once drafted, the document was amended by the government at the last moment and adopted including the changes (some of which crucial for the functioning of the broadcasting council) introduced without consulting any other members of the civil society. Due to these changes, the Broadcast council, a body designed to "bring order in the Serbian ether", passed from being prevalently influenced by the civil sector to being mainly under political control (the number of members decreased from 15 to 9, four of which are proposed by the state, four from different bodies of the civil society, while one was to be appointed by the 8 elected members and shall be resident in Kosovo)[363].

The Law on Public Information, adopted in March 2003, followed similar patterns. Drafted in collaboration with a series of international and domestic experts and other relevant actors, the law was submitted to the public discussion. Yet, as it got to the assembly during the period of the state of emergency when the freedom of speech was limited, the government used its MPs to re-introduce into the legislation some solutions previously strongly criticized by the non-governmental actors. The document adopted included also nine completely new articles regulating the sensitive issue of the limitation of right to information. The introduction of such solution, especially due to the manner in which these articles were included, caused some concerns in the media on possible censorship. The amendments also placed more restrictions on the protection of information sources than the earlier drafts discussed in public did, and included a series of detailed provisions, some of which obviously superfluous and too difficult to implement, which from the very beginning undermined the validity of the act and

[363] See the report of the representatives of the Serbian media submitted to the Council of Europe Secretariat delegation, May 2003, available on the Internet: http://www.b92.net/english/special/rds/media.php.

the compliance with the law[364]. The Law on the Free Access to Public Information, even though prepared together with the Law on Public Information, did not enter the procedure and was adopted only one year later.

The implementation of the laws was also delayed, representing, according to the analysts, a clear sign of the lack of political will to give away the control of the media. Thus, the members of the Council of Broadcasting Agency were appointed only in 2003, and even then, the three members nominated by the political institutions were nominated with no respect for the procedures. This brought to the dismissal of two "regularly" elected members, lack of approval of the agency's statute (necessary for the work of the agency), blockage of the work. The situation was "solved" only in the 2004 when the newly elected government adopted the amendments bringing the council under strict assembly's control, amendments strongly contested both by the domestic association of the journalists and by the international actors. Even though the law was amended already in summer 2004, the "new" members were appointed only in February 2005, three years after the law adoption and five years after the transition initiated. The failure to implement the Broadcasting Act delayed the procedure of introduction and allocation of the licenses, hampering the quality of the media sector.

The 2004 amendments and particularly the possibility given to the assembly to discharge Broadcasting council's members by a simple majority (seen the control the political parties exercise over their MPs) put the Broadcasting agency under the executive's control. Due to the disputes between the media associations and the government over the candidates, the appointment of the members of council was delayed, to bring to the creation of a body very similar in composition to the one from 2003. The council started with the work, most of which concerned the privatization of the state owned media, allocation of licenses for broadcasting (in order to bring order to the ether overcrowded by the existence of numerous private channels, both national and local, formed in the last years).

Seen the composition of the council, its potential politicization and executive's control, the examples of the failures to respect the norms, shortcomings in the procedure, abuse of power, and, in the case of some TV station (like BK), the clear partisanship use of the agency against the political opponents, it is no surprise that the process of the allocation of frequencies is judged not transparent and politically biased.

[364] See the report of the representatives of the Serbian media submitted to the Council of Europe Secretariat delegation, May 2003, available on the Internet: http://www.b92.net/english/special/rds/media.php.

The executive's control over the institution supposed to implement the Law on Radio Diffusion and to protect the professionalism, ethics and independence of media, actually meant that none of these goals is reached. The agency did not succeed in punishing the hate speech and slander, which worked their way even into the most read daily newspapers. The government managed to keep the ownership of the actions in the majority of state media, through the privatization process in which the state companies were buying the media, while the new constitution, by granting *any one without exclusion* the right to possess the media gives the basis for the re-establishment of the state ownership of the channels of communication.

The Law on the Broadcast was further amended in summer 2006, showing clear signs of a further worsening of the situation. The amendments were adopted as an answer to the public condemnation of the Agency's behavior in the process of closing the BK television, a step clearly dictated by the government and the Prime Minister Koštunica, threatened by BK owner's political ambitions[365]. The amendments increased the agency's powers, incorporating all actions the agency undertook in the process against BK, the exclusive right to decide to shut the emitter down and the use of the police forces in order to enforce decisions being among the new document's most controversial issues. The content of the law, the lack of consultation of the civil society and the process of amending were all strongly criticized by the international and domestic actors, president Tadić refusing to promulgate the law by decree. However, the government pushed back the accusations deriving from the domestic and international actors, refused the CoE and OSCE recommendations, and made its counterattack on the "external forces protecting the material interests of the western 'media magnate' and trying to control the media in Serbia by mixing up with the questions concerning the Serbian ether". They accused OSCE to be partial and to represent the interests of the RTL, which was refused the frequency, and in October the law was again passed in the assembly, a condition sufficient for overruling the presidential veto.

The delay in the implementation of the Law on Broadcasting delayed the transformation of the RTS (Radio Television of Serbia) into a public service until spring 2006, which allowed the government to continue exercising the political control over this media. When the process finally took place, the domestic NGOs and journalists' associations expressed their concerns

[365] The BK did actually violate the provisions on reporting during the elections, yet, the selective implementation of the law and the abuse of powers by the Council provoked the rection of both domestic as well as international actors. Thus, while BK was closed, the Council decided not to close the pirate broadcasters until the end of the parliamentary elections, even though one of the five national broadcasters that obtained the licence lamented the problems in transmitting due to the interference with its frequency caused by the pirate stations. See Helsinki report on Serbia, 2006.

about the process seen the persistent politicization of RTS and the governmental influence on it. According to the Law on Broadcasting, RTS was supposed to be transformed into the Public Broadcasting Service. The transformed public broadcaster was to be coordinated by the Managerial Board (whose members are appointed by the Agency) and by the Director (appointed by the Managerial Board). The failure to ensure the transparency of the appointment of the members to the Managerial Board gave way to criticisms by the civil society and media, especially the association of the journalists. Further on, the Managerial Board tailored the Statute of RTS, excluding the university degree from the conditions for being appointed as General Director in order to allow the assignment of such position to the politically controversial figure of Alexandar Tijanić (minister of information in Milosević government, very close to Koštunica's DSS and political appointee on the position of the Director of RTS since 2004)[366].

Another important piece of legislation was the Law on Free Access to Information. The law was adopted only in November 2004, and is generally in line with the European standards, apart from some shortcomings leaving space to ambiguous interpretation and difficult implementation (see below). The implementation itself was slow, the Office of the commissioner for public information becoming operational only in June 2005. The appointed commissioner was a politician from SDP, a small political party that caused the dissolution of the assembly in 2003 by withdrawing its support to DOS government due to the several scandals in which the government was involved. The election of the politician to such position was criticized by the domestic NGO, yet, after three years, the commissioner's work was praised by both domestic and international actors. In July 2007 Šabić was given a second mandate for the same function, decision welcomed this time by the civil society.

In the 2005 another important step in setting up the legislative framework for independent media was made, when the amendments of the criminal code finally substituted the prison sentence with the fee sentence for slander/libel. However, parallel to these positive developments in 2005, the assaults on the journalists, the political pressures over the media, in some cases even the open threats coming from high-level politicians and government members were also taking place. Such trend persisted in 2006 and in 2007, when the attacks on journalists, particularly on those working for B92, were intensified, while the prosecution for such crimes was unsatisfactory, rarely bringing to the arrest and trial of the people involved in such attacks.

[366] See Helsinki Report on Serbia, 2006.

The sad situation in media is confirmed by the Media center survey conducted in June 2007: 81% of the journalists claimed that journalism in Serbia is politicized, 95% that there is a political control/censorship of information in the media, especially as far as the information about financial abuses by politicians and financial giants is concerned. Only 2% believe that there is a large number of independent journalists. In the open interviews with the journalists undertaken in 2005, we discover how the political oppression is direct, politicians (without difference between "democratic" and "undemocratic" political elite) consider journalists nothing more than their own PR agents, calling and dictating the news on request, withdrawing given statements, controlling not only the substance of the news, but also the heading, subtitles and the formatting issues on the news concerning them. Such influence and control over the media is aggravated by the inclination of one part of journalists to seek for political protection and the presence, in some cases, of corrupted editors, journalists and members of the editorial boards. In many cases the control over the media is ensured through the ownership, either by the state, or by the parties, or by the financial and economic elite[367].

The situation in the media appears to go towards some improvements in 2008. As the police failed to protect the journalists, beaten up by the protesters (and one journalist was beaten up by the police themselves[368]) during the protests against the arrestment of Mladić in summer 2008, the media organized a boycott, refusing to report from the protest during which the incidents occurred, and exercised strong pressures over the government and minister of interior, trying to promote measures for greater protection of the journalists. The sentence of the court in Zaječar, according to which the violence over the journalists was punished with 6-month detention, only further increased the journalist's dissatisfaction[369]. Seen that the minister of interior was the high official during Milošević's regime[370], the criticisms strongly threatened his legitimacy and the image of the "new, reformed SPS" the party was trying to build in order to make itself acceptable to the EU and "pro-democratic" forces. After the pressures from the civil society and the journalist's association, the Ministry of Interior reacted in order to identify the people involved in the violence. The government promised that the law should be amended in order to ensure that the journalists are treated as

[367] See Media Center Beograd, research project "Ethics in media-did anything change?", 2005.
[368] See http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=30&nav_id=310763, http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=24&nav_category=64.
[369] See http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=31&nav_id=310988, http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=25&nav_id=310155.
[370] Ivica Dačić, the Minister of Interior since 2008, was a spokesman of Milošević's party SPS during the '90s, and the vice president of SPS since 2000.

officers on duty, and in order to give much harder punishments to those who perform acts of violence against the journalists. The association of the journalists prepared the draft proposal for the amendment of the Law on Public Information in October 2008. Should the government keep its promise and adopt the proposed amendments, the security of the journalists would significantly improve.

The amendments on the Law on Access to Public Information is also looked forward to by the commissioner public information who still complains the unacceptable limitations in legislation that are hampering his work and limiting the citizens' right to access the information. Among the inadequacies in the legislative framework representing the biggest obstacle in the work of this institution, we find the lack of mechanisms for monitoring the compliance and the failure to ensure the implementation of the commissionaire's decisions and recommendations. Even though, in two years of functioning, the commissionaire submitted more than 1500 complaints against the institutions and officials who failed to comply with the law, in only 39 cases the decision was brought, among which in only 6 cases the misdemeanors were condemned to pay the fee. Another limitation comes from the unharmonized legislative framework allowing limited access to information, when, according to the commissionaire's report, very often the access to the information was limited in order to cover for cases of corruption, abuse of power, violations of the law and similar[371]. The lack of a Law on the State Secret, Law on the Protection of Personal Data and the lack of other relevant norms is hampering the implementation of the Law on Access to Public Information, as the lack of clear criteria is commonly used to limit access to the information. The working space is also considered inadequate towards the staff and the workload, but even though the commissionaire required the solution of this problem, the government ignored its requirements for three years, to provide for a positive response only in spring 2008, yet further delaying the implementation of the decision. According to the conclusions from the reunion of the Ombudsman, Commissionaire for the access to the information, Supreme State Audit, Director of the office for public procurement, such difficulties in the elementary infrastructure appears to be "common to all independent institutions with particular competencies concerning the protection of citizens' rights and fight against corruption"[372].

As far as the ownership of the media and plurality of sources of information is concerned, the situation is biased. Even though there appears to be a plurality of the sources of

[371] See the informator on the functioning of the office of commissionaire for public information, pp. 117-118.
[372] See the report on the work of Ombudsman, Službeni Glasnik Srbije, April 2008, pp. 30.

information (several radio and television broadcasters and print media, as well as unrestricted access to internet), the domestic experts express concerns: "It looks at first glance as if Serbia had a pluralistic media scene. But the editorial positions in electronic and printed media, in most cases, do not approach the fundamental issues seriously, so they often are nothing but a flat-out transmission of political positions, positions of the tycoons, or other strong lobbies. The public interest is often losing the battle against the media campaigns by different political and interest groups" (Gaće, director of the association of journalists in Serbia, Panel on the Media Freedom of Serbia organized by IREX as a part of the "Media sustainability index" project, 2008). The media ownership is also a sector rising serious concerns. Even though the register for the media owners exists and all media are obliged to submit the ownership structure, the domestic experts underlined that the coordinated attacks the media launch against a specific political party or leader rise doubts on the truthfulness of the declared owner structures.

As far as the news agencies are concerned, there are three news agencies, two private and one public (Tanjug). The state-owned agency is considered politically biased as it is strongly dependent on the government's financial support and strongly favours the news originating from the state. In such light the obligation of the public media to use Tanjug as a source of information is further hampering the independence of the public media.

10.1.3. The IA's Role in the Reform

As the table shows, the media freedom is one of the issues on which the EU started to promote the norm from its very first reports. The issue was subject to continuous pressures and conditionality, yet it had not achieved the status of the key short-term priorities in the last period[373]. As far as the financial assistance is concerned, it should be underlined that the media sector is the one that received the financial assistance of the EU already during Milošević's regime, when the international actors offered their support to the local and oppositional media in a strategy of, as Vachudova would label it, "differential empowerment".

The EU's pressures for the media independence and right on information promotion were combined with the same pressures deriving from the CoE and OSCE, in some cases joint statements and recommendations being issued. CoE, as well as OSCE, were very active in the process of advocating and offering technical support (particularly in designing the Laws on Broadcasting 2002, on Public Information 2003 and on free access to information in 2004).

[373] See Baracani, 2005.

The CoE offered their opinion on different draft proposals, and organized meetings and consultations with the government and the ministry of culture. Yet, in the first two cases, the final versions of the text either failed to include some of the recommendations made (the Law on Broadcast), or were amended introducing limitations to the levels of liberty promoted by the international actors (the case of the Law on Public Information). The amendments introduced to the Law on Broadcast were strongly criticized by all actors included in the process (EU; CoE; OSCE), whose reports and public statements continue to underline the problem and to call for a proper implementation of the existing laws (yet, as we saw, no success was achieved in case of the Law on Broadcasting).

In the field of the freedom of expression and freedom of the media, the international influence in terms of legitimacy seems significant, testifying the importance and legitimacy of the European heritage in protecting political, civil and human rights. In some cases the rule adoption was explicitly due to the desire to comply (at least on the paper) with the IA standards: the consultation with the IA and the use of their expertise in the law drafting process, the call through media for the "compliance with the European standards", in the case of the Law on Broadcast the underlining of the devotion to the European principles and norms. This search for external (and in particular, European) acknowledgment as part of the legitimacy and confirmation of the government's democratic potential indicates the possibilities of the use of the social influence for the promotion of the media freedom. However, even though the IA issued some reports criticizing the situation in the Serbian media, the low media visibility did not allow them to play a catalyst influence in pushing the change forward.

10.1.4. Assessment

While in the field of the media freedom we registered the development of the legislative framework, at the same time we saw that the improvements (significant in the first years of the regime change) are still rather slow. The legislation is only partially in line with the international standards, while the implementation faces more serious obstacles. The difficult financial situation of both media and journalists is another source of concern as it makes the media vulnerable to the influence of the economic elite.

The international actors were rather active in promoting the settling of the legislative framework in the field of media freedom. The coordinated action of EU, CoE and OSCE included conditioning, advocating, technical support, monitoring and criticizing. On the

domestic side we register the consciousness of citizens about the existence of media control, the call for independent media coming from the journalists' association, some domestic NGO and civil society. However, the lack of governmental change agents and the strong interest of the domestic elite in maintaining the control and politicization of the media obstructed the reforms and brought to a mere fake compliance. We can notice the "nominal" devotion to the freedom of the press in all political parties' programs, and the general principle is often revoked in the electoral campaign. Yet, the importance of the media's influence on the public opinion makes the control over the media one of the means of the struggle for power any politician tries to use. In the asset with weak democratic institutions such incentive turns to a de-facto politicization of the media and difficulties in the implementation of the legislative framework. Such low ethics, combined with corruption, difficult financial situation and crisis of professionalism, induce some journalists and media to get "side jobs" and search for the sponsorship of the political or economic elite.

Finally, it appears that in Serbia there is still a lack of understanding what the role of media should actually be, even among the editors of the most common newspapers. Seen the radicalization of the political temperature and the growing nationalism, the questions of self-censorship and the role of the media become salient, the borderline between the impartial and professional reporting and the creation and maintenance of consensus becoming an important question. In Serbia there is still some bias between the necessity for impartial information and the media's political, "educational" function (prone to supporting the communist regime during the communist regime, to supporting "patriotism" and defending the "Serbian nation" in Milošević's period, to supporting "democracy and change" connotation in the DOS period). This ambiguity can be identified also on the supply side, on the side of the international actors who often request media to be used in order to sensitize the Serbian public opinion on issues such as ICTY, war crimes and Kosovo, changing the prevailing negative opinion on the tribunal and contributing to the arrestment of the indictees. Such pressures on the Serbian ruling elite to guarantee a particular type of reporting in the media is actually advocating a politicized media under executive control, and a role of media as a *creator* of the public opinion. The question, on both the supply and the domestic side, therefore is: does the limitation of the media freedom, when used for serving "democratic goals" as a higher good, justify the violation of the basic democratic values? In Serbia, due to its very long history of authoritarian regimes, the most common approach, both on the political elite and

among the journalists and citizens is that "higher good", be it "defense of the state" or "democratization", justifies the limitation of the freedom of expression. The requests and criticisms coming from the IA concerning not only the system, but in some cases also the *content* of the media reporting, are not helpful in changing the current approach to the media.

10.2. MACEDONIA

10.2.1. THE MEDIA AND THE FREEDOM OF EXPRESSION SINCE 1990

The independence and the fall of the communist rule in Macedonia represented the beginning of the development of a free media sector. The constitution adopted in 1991 included the freedoms of expression, of information, of receiving and accessing to information as fundamental freedoms and rights of the citizens (article 10), while the Law on the Essential system of Public Information, introduced in 1990, made a radical turnaround concerning the possibilities for establishing printed media. The end of the unipartism represented the moment of the liberalization of the media, a series of new sources of information immediately spreading out.

In the first years of the transition, due to the lack of legislation regulating the matter, several electronic media outlets were established, bringing to what is labeled in domestic literature as "a chaotic and uncontrolled explosion of media". The variety of the offer, especially in television and radio channels, was combined with the complete lack of any criteria for registering the media, of professional, technical and financial standards, which, as a consequence, brought to a low quality of the content and lack of professionality of the media scene. Until the adoption of the first legislation aiming to regulate the existing chaos, more than 250 private broadcasters with "undefined status, without clear concept and physiognomy, without elementary technical and technological conditions for work, with freely chosen and illegally used broadcast frequencies" appeared[374]. As far as the printed media are concerned, the situation was exactly the opposite, with more pluralism and competition in printed media being established only in 1996 with the emergence of the first private newspaper "Dnevnik", to explode in the pluralism of the printed media only after the 1999.

After the first six years, during which the state only sporadically undertook "moratorium" measures or shut down a few broadcasters (officially in order to bring some order in the ether,

[374] See Šopar and Jovanova, 2000.

but, due to the dubious and undefined criteria for such actions, the actual political background of such decision cannot be sorted out), the state made its first steps aiming to set up a normative framework. The issue was regulated only in 1997-1998 (also due to the obligations deriving from the membership in the Council of Europe), when the Law on the Broadcasting Activity (1997), the Law on Telecommunications (1998), the Law on Concessions (1998) and the Law on the Establishment of the Public Enterprise Macedonian Radio Television (1998) were adopted. The adopted legislation calls for the principles of the freedom of information, of receiving and accessing to information and of establishing institutions for public information as guaranteed by the Macedonian Constitution (art 16) and by the European Convention on the Protection of Human Rights and Fundamental Freedoms.

The settled legislative framework introduced the necessary material, financial, technical, programming and staffing criteria for obtaining the concession for broadcasting, and it regulated the way both public and private sector are financed. It introduced some order in the field (to the extent to which it was implemented) and normatively constituted the public and private sector, formally establishing pluralism for broadcasters[375]. Among the other norms, it is important to underline that the law established the principle of balance in the informative function of the broadcasters, calling them to be open to free competition and impartial information on various political ideas, and to treat political subjects in their programs in an appropriate and impartial manner. It forbids the political parties (or their leaders) to own the media.

The most significant provisions of the legislative framework established at the end of the nineties concerned the establishment of the Broadcasting Council, a body supposed to "represent the citizens' interests", made of nine members appointed and dismissed by the assembly (a solution that easily shifted the citizens' representative to the representative of the ruling majority's interest). The council was given the power to propose decisions concerning the allocation of the frequencies and of the resources from the broadcasting subscription fee intended for projects of public interest, but the legislator reserved the final decision to the government, significantly weakening the council and increasing the government's influence.

The Law on the Establishment of the Public Enterprise Macedonian Radio Television (MRTV), adopted in 1998, regulated the structure of the MRTV, further strengthening the political control, as the centralized organizational structure turned the politically appointed management board and general director of the MRTV into central figures on which all other

[375] See Šopar and Jovanova, 2000.

functionaries are dependent. As far as the local public broadcasters are concerned, the power to appoint the key figures in these media was given to the municipal councils, making them dependent on the local governments.

The financing of the media, as regulated by the legislation, represented another source of concern. The public media, MRTV, was thought to be financed by the fee paid by citizens on a monthly basis, and to "integrate" the revenues with funds from the commercials and from marketing services, from the sale of own programs, sponsorships and donations, as well as from resources provided by the state for special programs. The idea behind it was to make MRTV independent by ensuring that its financial resources are independent from the government. However, seen the incapacity to ensure the payments of the fee (only about 50% of fees is paid by the citizens who often refuse to pay, particularly seen their biased view of MRTV as strongly politicized), MRTV turned to commercials which are allowed to take up to 7% per broadcasted hour (unlike the private media, where they are allowed to take up to 20% per broadcasted hour). Allowing MRTV to broadcast commercials put the private media in a even more difficult position, as MRTV, seen its monopolistic and favored position on the market, pushed the prices of the marketing services down, bringing the private media (for which marketing, beside donations, was almost the only source of finances) to an extremely difficult position. This step further pushed the private media into a financial crisis and forced them to trade their own independency, becoming subject to the political and economic elite's pressures.

The law also decreed that 10% of the collected fees shall be used for financing the private media's "public interest projects", but as the allocation of these resources is upon the government (the broadcasting council only has the power to suggest, which is often not respected by the government), this only represents another source of the private media's dependence on the political power (see Šopar, 2005).

Further on, the lack of legislation guaranteeing editors and journalists the protection of the workers' unions and the lack of collective contracts puts owners and financiers of the media in the position to exercise undue pressures over the journalists fearing for their jobs. The non-professionalism, subjectivism and submissiveness to pressure or self-censorship are a direct product of a system in which the de-jure guaranteed freedom of information is de-facto hampered by the fierce competition where only those who are capable to ensure the protection of the economic and political centers of power can survive[376]. The politically biased

[376] See Šopar, 2000, 2005.

media, both state-owned (incline to the ruling elite) and private (often controlled by the different political parties), are the most criticized feature, and the ruling elite appears not too prone to change[377].

Other issues of serious concern in the media legislative framework established in the '90s were the lack of adequate training for the journalists, the criminalization of slander (for which the criminal code prescribed imprisonment for several months) and the lack of a Law on Access to Public Information. All three issues represented a serious obstacle in the media system development. The lack of training of the journalists, particularly when classical education is not able to satisfy the needs of the too-pluralized market requests, brought to a significant decrease in the staff's quality (both journalists and other professions). The lack of a comprehensive government's policy on media resulted in the failure to develop a strategy for the education of the journalists. The classical university education (criticized upon as too theoretic) is combined with the "alternative" education[378], but both are functioning without an insight on the real needs of the journalists[379].

In the aftermath of the 2001 armed conflict, the situation in the Macedonian media sector was characterized by strong political and economic influence over all the major sources of information, lack of professionalism, quality criteria and confusion in the overcrowded Macedonian ether. Another salient problem was the ethnic division reflected not only in the de-facto existence of two parallel media systems, but on the existence of what can be considered two parallel truths, two distinct value systems and two different weltanschauung reflecting two distant realities[380]. The Helsinki committee report on the situation in the Macedonian media in 2001 strongly criticized all journalists, broadcasters and newspapers for the war propaganda and lack of professional reporting. The spread of the ethnic tensions through the media, both in Macedonian and Albanian language often was, and still is, the core of the criticisms in the reports of international actors involved in rule promotion.

[377] On the politicization of media see Andrevski 2003, as well as Šopar and Jovanova 2000, European commission report 2002. For an analysis on the political affiliation of the particular media according to the content analysis of the broadcasted programs, see Andrevski, 2002

[378] The independent schools of journalism were organized for the first time in 2002, when the Macedonian institute for media organized a training for all professions and profiles, example later followed by different NGOs, INGOs, IGOs.

[379] See Šopar, 2005.

[380] See Šopar, 2004.

10.2.2. The Changes

As the role of media in the 2001 conflict was criticized by different national and international actors (like, for example, the Helsinki Committee), and as the core of the 2001 ethnic conflict also tackled the issues of education and culture of the national minorities, in the conclusive part of the agreement the contractual parties invited "the international community, including OSCE, to increase its assistance for projects in the area of the media in order to further strengthen radio, TV and print media, including Albanian language and multiethnic media". The parties also invited "the international community to increase professional media training programs for members of communities not in the majority in Macedonia" (Annex C to OFA, article 6.1). In august 2002, the OSCE mission to Skopje settled the Media Development Unit (MDU). The organization was active in organizing the training, advocating and offering technical assistance in the drafting of new pieces of legislation, and particularly in assisting the creation of the local media in the language of the minorities.

The governmental change in 2002 also brought to a series of changes in the media sphere (beside the usual changes in the staff of the public-owned MRTV). The largest state owned print media enterprise, Nova Makedonija, literally collapsed. After a series of financial difficulties, it was privatized during the electoral campaign in an attempt of at time ruling VMRO to gain points by solving the urgent problem of one of the oldest Macedonians companies. However, the newly elected government, after assessing the procedure of privatization, declared it unlawful and annulled the contract with the Slovenian buyer, which caused further financial agony and the almost ruination of what was the monopolistic giant in the field of the printed media until 1996.

In the same period, 2002-2003, the German company WAZ bought the three most influential printed media, "Utrinski vesnik", "Dnevnik" and "Vest", that merged into one company in mid-2003. This brought 54% of the newspapers' market under the control of a single owner, WAZ, a dominant position according to the Law against Restriction of Competition (which considers it a monopoly when the control reaches 50% of the market or more), but it was still considered a situation of "healthy competition" and "absence of monopoly" according to the assessment of the Anti-monopoly administration[381]. The domestic authors showed great concern over the re-establishment of the monopoly in the printed media, comparing the situation with that of 1996 when monopoly was exercised by

[381] See Šopar 2005, Andrevski 2002.

the state-owned Nova Makedonija. They also underlined that the presence of foreign capital in the field of the media would only further facilitate the government in maintaining the influence over the media, as the "government (under the motto that it must control the influx of foreign capital in the media), through special governmental commissions, has the last word and insists on investors that are not too liberal, i.e. whose political stance would not be significantly different from the stance of the state"[382].

The positive developments in this period were the reconstruction of MRTV, the introduction of the second channel with programs for the national minorities and cuts within the staff. The debate over the legislative framework initiated, mainly under the pressures from the civil society, the media sector and international actors (the most prominent to mention are OSCE, CoE and EU). The great expectations of the actors (particularly state and private broadcasters) made the debate over the Broadcasting law particularly vivid. While the private media were expecting the new government to fulfill the electoral promises (decrease of the fees for using broadcasting frequencies by 90%, revision of the right to advertising and propaganda via MRTV, legal regulation of the journalists' labor rights, provisions of transparency in expenditure of funds belonging to public enterprises etc[383]), the MRTV was hoping to solve its financial problems through access to state budget.

The new Law on Broadcasting Activity was finally adopted in November 2005. The change of the appointment procedures of the members of Council as well as of the managerial board of the MRTV contributed to more independence from the governmental influence over these bodies. The law was drafted in cooperation with OSCE, the Council of Europe and EU and incorporated the recommendations of these bodies, thus contributing for the law to achieve a positive assessment from the international actors.

However, the practice of politicization in the appointment of the heads in MRTV persisted. The government kept on appointing the general director, switching the appointee with every shift of government, and even introducing the ad-personam drafted amendments to the law in February 2007, in order to allow the appointment of the general director that, at the time, did not have the Macedonian citizenship. Arguing that the foreign expertise would help MRTV out of its crisis, the former OSCE member Janez Sajović from Slovenia was appointed as general director, while the political appointee was given the position of second general director (the two-headed executive was established by the changes introduced in

[382] See Šopar, 2004.
[383] See the electoral commitments of SDSM in Andrevski 2002.

February 2007) in order to exercise control over Sajović[384]. As the constitutional court annulled the provision allowing foreigners to be appointed as one of two members of the executive body, the government decided to grant Sajović the Macedonian citizenship for his personal contribution to the Republic of Macedonia.

The failure to ensure the mechanisms for financing the media is the most serious shortcoming of the Law on Broadcasting, criticized both by the international experts immediately after the law adoption, and by the employees three years after the law implementation. Some of the unpopular solutions we mentioned above persisted (the right of MRTv to broadcast commercials), even though the matter was regulated in a more precise manner. Some new solutions adopted also caused concerns like, for example, the direct collection of the tax for broadcasting that was previously collected via the electricity bill and was still rather low (only 50% of the taxes used to be collected, see OSCE report 2005). This resulted in further concerns rising on the capacity of MRTV to collect the tax, concerns that were proved founded in practice. As it was stressed in the interviews with the journalists of MRTV, the financial problems are more serious than ever, bringing the national broadcaster almost to the point of bankruptcy, allowed by the changes introduced in the Law on Broadcasting in august 2008. The lack of political will, the interests of the political leadership from the funds potentially deriving from granting the new frequency to the national broadcaster and the lack of interests from the managerial board of MRTV were identified as the main causes of the failure to reform MRTV[385].

In 2006 another positive step was made with the adoption, after several years and several unsuccessful efforts, of the Law on Free Access to Information. Such delay in the adoption of the Law on Access to Information was identified by Šopar to be caused by the government's intention to:

- limit the access to information and maintain the discretionary power over which information could be made public, and
- use the opportunity of the adoption of the Law on Media that would regulate the matter to introduce more strict control over the journalists.

Thus, after the country's entrance in the Council of Europe and the adoption of the European Strategy on Human Rights that made precise requirements in the field of media

[384] Interview with Manevski, media assistant in OSCE spill-over monitor mission to Skopje, august 2008. Manevski specified that Sajović entered an arrangement with Macedonian government on his own behalf and that OSCE did not take any role in this decision.

[385] From the interview with Manevski, OSCE media assistant, august 2008.

freedom, the international pressure to adopt the Law on Media and Law on Free Access to Information resulted in a series of draft proposals coming from the government, each of them criticized by domestic and international public as far from being democratic (see Šopar, 2001). After the media and civil society pressures for the adoption of the law in 2003, the draft was finally prepared, but it remained blocked in the government after its first reading in the parliament. It was finally adopted only in February 2006, but, as reported by the EU commission, the implementation is still difficult as many institutions are still not prepared or are unwilling to facilitate access to the information held. The weak administrative capacity of the commission for the protection of the right to free access to public information is further hampering the implementation of the law[386].

In 2006 the custodial sentencing for defamation was also eliminated, but the question of defamation is still not in line with the European standards. Seen the number of the journalists prosecuted for libel, defamation, disinformation and similar (according to the Helsinki committee report 2006 there is no single redaction that is not having journalists under prosecution), and seen the existence of cases where a politically biased judiciary brought sentences against the journalists who published a correct information, the problems of liberty, independency, freedom of expression, professionalism became strictly linked with the problem of the judicial independence and the rule of law.

Even though the legislative framework for ensuring the freedom of expression and information in Macedonia significantly improved in the period 2005-2006, and even though the Broadcasting council initiated its work adopting a series of necessary documents for the law implementation, the pressures over the media, the political influence, the lack of respect for the law during the electoral campaign as well as the recent effort, advanced by the government, to use the EU recommendations to adjust the law in order to get rid of the broadcasting council and put it under the ministry's control, represent issues of serious concern for the future of the media in Macedonia. The IGOs and international monitoring organizations active in the field therefore rank Macedonia rather low in the respect for the freedom of expression. Freedom House thus continues to consider the country partially free in terms of media freedom, while in the Media Sustainability Index the country is not performing well either. The main problem, as reported by Kambranov, editor of the TV channel 5, lies in the fact that the freedom of expression, while guaranteed by the law, is not respected by the judges. The values of freedom of speech and expression are not entrenched

[386] See Commission Report on Macedonia, 2007.

in the society, but they are considered as an exception, rather than a general right (see the MSI report on Macedonia). While the jail sentence is no longer prescribed for libel, it remains a criminal offence, and the charges against the journalists continue growing. The sentences are usually economic, but the amount of the penalties, together with the costs of the judicial process, is so high that it represents a very serious problem for the journalists. The Broadcast council, even though the procedure for its appointment was made less politically biased (the members are appointed by the parliament upon the proposal from different independent bodies and parts of the civil society), is under strong government's pressure, in some cases resulting even in biased decisions. Even this partial dependence on the assembly was enough to open the door to the political pressures. The failure to ensure the financial autonomy of MRTV placed the public broadcaster's dependency on the government, while the fierce competition on the commercial market, the only financial resource for the private media, resulted in a drop of the prices and increase of the media's vulnerability to the economic elite.

10.2.3. The International Actors and the Media Development in Macedonia

Since its adherence to the Council of Europe, Macedonia has become subject to the external promotion of the freedom of expression. The recommendations of the Council of Europe aimed to the protection of the independence in the broadcasting and printed media, editorial freedom, even-handed tax treatment, free availability of newsprint and equal access to broadcasting, printing facilities and to distribution outlets. In more concrete terms, the requirements of the CoE for media freedom in Macedonia concerned the adoption of the Law on the Public Media (never adopted); the restriction of the influence on the media by the government and the parliament, and the guarantee of the independence and transparency of the Broadcasting Council; the dismantling of the near-monopoly in advertising of the Nova Makedonia agency[387].

Since the 2001 conflict and the signature of OFA, the OSCE mission was established, with the Media Development Unit particularly organized in order to foster the development of the media in Macedonia. The mission was active in organizing the training (particularly for the journalists belonging to the national minorities), in advocating and promoting the legislative changes and in monitoring the developments in the field.

[387] See Council of Europe, "Honouring of Obligations and Commitments by the Former Yugoslav Republic of Macedonia".

The EU also included freedom of expression and media sector development among the priorities, both as a part of the political criteria and of the sectoral policy in the field of the "information society and media". Similarly to other fields, the recommendations became more concrete, gaining in determinacy, with the adoption of the European Partnership that listed more precise priorities. While in the first period (2002-2003) the core concern was to ensure the compliance with the European Convention on Human Rights, in the partnerships we find the requirements to improve the broadcasting legislation, introduce the independency of the media regulatory bodies, review the legislation on defamation, tackle the issue of the financing and financial independence of the media – or lack thereof (for more details see table 1).

10.2.4. Assessment of the Reform

The pattern of the media system development is quite in line with the patterns in other similar issues where the difficult process of the ruling elite and political parties democratization is involved. The political influence established over both public and private media (even though through different mechanisms and with different patterns) proved rather difficult to dismantle. The political parties and the ruling elite, together with the economic actors and the corrupted, unprofessional members of the profession, represented the veto players obstructing the strengthening of the media freedoms in Macedonia. We can therefore register a series of efforts to obstruct the change, and even to reverse the positive developments made, in order to re-establish the political control over the media.

On the supply side, we shall first account for the obligations deriving from the membership in the Council of Europe that brought to the first normative changes in 1997 (above all, adoption of the Law on Broadcasting), that, however, were far from being sufficient. In the period after the OFA, the international pressures (even though not too strong, seen the existence of "more salient" issues occupying especially the EU's attention) were constantly exercised through the usual instruments (monitoring of compliance and the EU partnership recommendations). To the recommendations and calls for compliance coming from the Council of Europe, the comparatively more determinant pressure of the EU was added, both "joining" strengths with the CoE and pushing for the respect of the Convention on Human Rights, as well as adding the institutional requirements. In combination with the strong pressures coming from the civil society, the media and general public, and in combination with the intention to apply for the candidate status, the increased international pressures resulted in the positive legislative changes in the sector in the end 2005-first half of

2006. As the media and the informative sector represent part of the acquis as well, the EU pressure in the field in the recent years is mainly part of the integration process rather than subject to the EU promotion of the political changes. Thus, in the recent European Partnership, recommendations tackling the media freedom are treated as part of the sectoral policies and not as part of the political requirements.

The result was, as with many other dimensions we analyzed, an active legislative activity and only a partial change.

10.3. A comparative Assessment

The building up of the legislative framework supporting the media freedom in both Serbia and Macedonia faced a series of difficulties mainly coming from the lack of will of the political and economic elite to loosen their control over the media sector. The nominal devotion to the freedom of speech and the right to information, built in the constitutions adopted at the beginning of the nineties in the two countries, was not filled with substance. However, as it emerges from our analysis above (see the appendix for the summary), the difficulties and developments followed slightly different patterns in the two countries.

In the case of Macedonia, the difficulties derived from an unfavorable economic environment, which brought to a situation in which all media outlets are forced to seek their resources from the political and economic circles. One of the causes for such situation should be looked for in the government's policy towards the media that allowed unfair competition by letting the state-owned MRTV to dictate the prices of advertisement, thus hampering the competition on the market and putting the private media in an unsustainable financial situation. The only private media that survived such sharp competition hampered by the favored position of the state-owned media were those that found alternative financial resources mainly coming from the political and business cycles.

In Serbia, the control over the state-owned media was combined with the legislation allowing censorship and harassment of the opposition (the Law on Public Information from 1998 had a strong role in this process). After the overthrow of the regime in 2000, the situation significantly improved as the 1998 legislation was pushed out of force. Yet, lifting up the mechanisms of harassment was only a first necessary step, the settling of the legislative framework for the protection of the media freedoms representing a much more difficult task.

While the regime change represented a favorable factor for pursuing the media freedoms, as the status quo was strongly delegitimized by all relevant actors, at the same time the high temperature of the events brought to the situation where, again, the plurality of the opinion was not tolerated. Criticizing the "new democratic government" was an act perceived as a praise to the ancient regime and as such was condemned and demonized. The journalists and editors acted consequentially, self-censorship being diffused particularly in those media that were previously controlled by the Milošević elite. The lack of tolerance and the tendency to limit the freedom of expression in the name of a "higher, national interest" still persist in Serbia. Be it the "communistic ideal", the "Serbian nation" or "democracy", there is a tendency to be less tolerant towards those opinions that are not in line with the national goals prevalent at the moment. The violations of human rights during the 2003 state of emergency, not unlike the episodes of violence against journalists and the social actors advocating unpopular issues, particularly intensified in the last years of the polarization of Serbian political life, are a clear illustration of the law's interiorization of the freedom of expression among some parts of the population. Obviously the ruling elite, favored, and at the same time contributing with its rhetorics to the maintenance of such asset, was not particularly eager to loosen the inherited mechanisms of media control whose benefits it now enjoyed.

In both cases the development of the legislative framework followed a similar pattern in which the actions of the international actor were crucial for supporting the present, active, but relatively week change agents (the media associations, the civil sector) in their struggle against the ruling elite. The strategies, however, as well as the intensity of the commitment of the international actor, appear different. In the case of Serbia the conditionality (relatively credible, seen the overall low credibility of the EU action in Serbia) was combined with the financial support conditioned with the rule adoption (the promotion of the media freedom in Serbia amounts to about 1.5% of the EU CARDS program destined to Serbia in the period 2000-2006). The media is one of the few sectors to which EU's financial assistance was made available even during the Milošević period, which is clearly in line with Vachudova's observations concerning the usage of differential empowerment as a strategy of the rules promotion. In the assets with the authoritarian undemocratic regimes, but also, in those assets where the government is not inclined to listen to the international actor, the civil and media sector are paid more attention to, as they are perceived as potential change agents and partners of the IA's. The existence of the conflict over the European orientation of the country and

the presence of the actor questioning the legitimacy of the EU (like the SRS and DSS who gradually passed from a pro-EU to an against-EU position) contributed to increase the EU's attention on the issues concerning the media in Serbia (we can follow the rise of the concern for the EU's image in the section "perception of the EU" published in the reports in 2002, 2003, 2004). The (lack of) EU financial assistance to the media sector in Macedonia, seen the widespread support for the EU integrations in this country, is also an argument going in line with the above. As Sašo Klekovski, the coordinator of one of the leading NGOs in Macedonia, expressed: "the EU's attention for the civil and political rights (and in particular for the civil and media sector) fluctuates in function of the vulnerability of the government in office to the EU influence. They usually remember that civil sector exits only when they can not obtain what they want from the government. And seen the servile behavior of the Macedonian political elite, the civil sector here lost importance.[388]"

The low EU financial support to the media sector in Macedonia is also to be explained by the predominance of issues concerning the security dimension and inter-ethnic relations. The EU thus concentrated on other issues, leaving the promotion of the media freedom to the other actors (in particular to the Council of Europe and OSCE) to whom it offered support. The OSCE mission to Skopje formed the Media Development Unit in 2002, which offered significant assistance to the process of building the legislative framework. However, the existence of such unit should not be seen as the cause of the lack of EU-coordinated support, as in other fields where OSCE also organized particular units for managing the rule promotion (OSCE's Police Development Unit, OSCE's Administration Reform Unit etc), the EU nevertheless developed its own agenda, also getting directly involved in the rule promotion.

Last but not least, many of the difficulties faced in the process come from the particularities linked to the question of media freedom in general. The ownership structure, even when properly declared, is not easy to control and at the same time it significantly influences the editorial policy. As stressed by a Serbian journalist in an interview undertaken by the author: the problem of the media freedom is far more than only the legislative framework. For example, how can you know whether the TV station belongs to the politician or not? How do you know whether the declared owner is the real owner and what are his personal links? No law can control these things… There is and there always will be, in Serbia as well as in Italy, France, USA, the temptation to control and, if possible, to manipulate the

[388] From the interview with Klekovski S, summer 2008, Skopje.

information. The law, obviously, can help. But after all, it is on the journalist to choose between comfort and truth."

APPENDIX

Table 1: "Situation of the media freedom in Macedonia and Serbia according to the Media Sustainability Index, 2007".

Serbia	Media Sustainability Index	Macedonia
2.21	Free speech:	2.10
1.91	Professional journalism:	2.27
2.48	Plurality of news sources:	2.42
2.87	Business management:	2.11
2.50	Supporting institutions:	2.50
2.39	*Total score*	*2.28*

Source: Media Sustainability Index., author's elaboration.

Table 2: "Situation of the media freedom in Macedonia and Serbia in 2007 according to the Freedom House".

Serbia	Press Freedom (by Freedom House)	Maceron
13	Legal environment:	11
17	Political environment:	18
9	Economic environment:	16
45	*Total score:*	*45*
Partially free	*Status:*	*Partially free*

Source: Freedom House: Freedom of the press, author's elaboration.

Table 3: "EU priorities and media sector reform in Macedonia".

2002 SAA report	Strengthen the legal and constitutional guarantees on freedom of expression in line with the European Convention on Human Rights
2003 SAA report	Strengthen the legal and constitutional guarantees on freedom of expression in line with the European Convention on Human Rights. Support the development of the media sector in line with the European standards.
2004 European Partnership	**Short term priorities:** Promote freedom of expression and media - Review the legal framework for broadcasting to prevent political interference. Take concrete steps to ensure the independence of media regulatory bodies. Review the legislation on defamation to reflect European standards and the jurisprudence of the European Court of Human Rights.
2006 Accession partnership	**Short term priorities**: Implement the new law on broadcasting to guarantee the independence of broadcasters and the quality of the service they provide. Ensure that media legislation is in line with the recommendations formulated in May 2005 by the joint expertise of the Council of Europe and the Commission. Ensure that the legislation on defamation reflects the European standards. Strengthen the independence and administrative capacity of the Council for Electronic Media.
2007 Accession partnership	**Short term priorities:** Strengthen the independence and administrative capacity of the regulatory authorities for electronic communications and media. Ensure a stable and sustainable source of funding for the public service broadcaster and the Broadcasting Council.
2008 Accession partnership	**Short term priorities**: Strengthen the independence and administrative capacity of the regulatory authorities for electronic communications and media. Ensure a stable and sustainable source of funding for the public service broadcaster and the Broadcasting Council.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia, author's elaboration.

Table 4: "EU financial assistance to the media sector in Macedonia".

2001	0.18 millions	Media support

Source: European Agency for reconstruction.

Table 5: "EU priorities and media sector reform in Serbia".

2002 SAA report	Outstanding issues – democratic or technical – concerning the media should be completely resolved by mid-2002.
2003 SAA report	No further delay in putting conditions into place for the full implementation of freedom of expression. Support the development of the media sector in line with the European standards.
2004 European Partnership	**Short-term priorities:** Decriminalize slander. Enforce media legislation, in particular broadcasting law, by assuring political independence of the Audiovisual Council. Adopt law on free access to information, in line with the Council of Europe standards.
2006 European Partnership	**Short-term priorities:** Enforce media legislation. Ensure effective independence of the Broadcasting Council, as well as fair and transparent allocation of broadcasting frequencies for media operations. Ensure the full and timely transformation of the state-owned broadcasting media into public service broadcasters; complete the transformation of Radio Television of Serbia into a public service broadcaster in line with the European standards. Fully implement the law on free access to information.
2007 European Partnership	**Short-term priorities:** Improve the functioning of the broadcasting council in line with the international standards, ensure fair and transparent allocation of regional and local broadcasting frequencies to media operators. Fully implement the Law on free access to information and strengthen the office of the Commissioner for Free access to information to ensure the enforcement of decisions/recommendations. Start approximation to the *acquis* on the audiovisual sector and improve transparency and accountability, particularly of the Republican Broadcasting Agency. Sign and ratify the European Convention on Transfrontier Television.
2008 European Partnership	**Short-term priorities:** Improve the functioning of the broadcasting council in line with the international standards, ensure fair and transparent allocation of regional and local broadcasting frequencies to media operators. Fully implement the Law on free access to information and strengthen the office of the Commissioner for Free access to information to ensure the enforcement of decisions/recommendations. Start approximation to the *acquis* on the audiovisual sector and improve transparency and accountability, particularly of the Republican Broadcasting Agency. Sign and ratify the European Convention on Transfrontier Television.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia, author's elaboration.

Table 6: "EU financial assistance to the media sector in Serbia".

2000	1 million	Support to the independent media outlets.	
2001	2 millions	Support for the transition process of local independent media outlets and for the restructuring of Radio Television Serbia.	
2002	1 million	Support to the establishment of the Serbian Broadcasting Council (300.000). Support to the transformation of RTS into a Public Broadcasting Service (700.000).	
2003	6 millions	Transformation of RTS into an independent and financially sustainable broadcasting service. Support and strengthening of the independent media (in particular Media centre and B92).	
2004	3 millions	Support to RTS. Postgraduate specialized media studies. Media fund.	
2005	2.5 millions (2.35 + 0.15)	Media fund (improving the quality of the production) Enforcement of the Media Legislation- EU/CoE Joint Initiative.	The government has to implement and enforce media legislation in line with EU standards, e.g. the Broadcasting Law, in particular the re-election of the Broadcasting Council and the launching of the tender for issuing licenses to national, regional and local electronic media; distribution of broadcasting frequencies and the establishment of the Telecommunication Agency necessary for issuing of licenses.
2006	2 millions	Support to the Yugoslavian film archive.	The resources of the archive should be readily available for all the parties who are interested in the former Yugoslavia. To that end, an agreed plan of promotion/marketing will be formulated between the Agency, the Ministry of Culture and Media and the Archive management prior to the provision of Support. An Implementation Agreement will be signed between the Agency and the Ministry of Culture and Media to ensure the Archive premises will be in good order and ready for the installation of the equipment.

Source: European Agency for Reconstruction, annual programs, 2007 IPE documents.

Table 7: "Legislation regulating the media sphere and media freedom in Serbia and Macedonia" (based on the legislation in force, author's elaboration).

Freedom of speech, Freedom of media, Right on information

	Serbia	Macedonia
Constitutional guarantees:	Art 46: freedom of expression., Limitation in cases of hate speech, call for violent change of the constitutional order, call for violation of the territorial integrity, war propaganda; Art 50: freedom of the press, Limitation in cases of hate speech, call for violent change of the constitutional order, call for violation of the territorial integrity, war propaganda; Art 51: right to information. No limitations prescribed.	Art 16: freedom of expression, freedom of public information and creation of informational institutions. Right to free access, reception and transmission of information. Censorship is forbidden. No limitations prescribed.
Legislative guarantees:	The constitutionally guaranteed rights are further introduced in all relevant legislation on media.	The constitutionally guaranteed rights are further introduced in all relevant legislation on media.

Law on Broadcasting

	Serbia	Macedonia
Adopted:	2002, amended 2004, 2006.	1997, 2005 amended 2008.
Considered in line with EU standards:	No, due to the procedure of appointment of the members to the Broadcasting council.	Yes.
Main problems:	Delayed implementation. Strengthening of the political influence over the Broadcasting council, lack of transparency in the functioning of the council, selective implementation of the laws.	Not properly implemented in those parts concerning independence of MRTV; Not offering any solution to the financial problems the media, both state and private, are facing.

Law on Public Information

	Serbia	Macedonia
Adopted:	2003.	
Considered in line with EU standards:	Mainly.	
Main problems:	Provisions allowing censorship, possibility for the state to own news-	

	agencies (and, linked with this, the pressure on public media to use state-owned agencies which, due to the state funds, enjoy the benefits of unequal competition).	

Law on Access to Public Information

	Serbia	Macedonia
Adopted:	2004.	2006.
Considered in line with EU standards:	Yes.	Yes.
Main problems:	Difficult and delayed implementation (the institution experienced serious obstacles and lacks the basic infrastructure) Limitation in functioning Lack of implementation mechanisms.	Difficulties in implementation as still many state institutions refuse or are not capable to release the information they are holding. Moreover, the commission for the protection of the right to free access to information is considered weak and with low administrative capacity to ensure the rule implementation.

Custody-sentence for slander/ libel

Abolished:	2005.	2006.
Problems:		Still many journalists under accusation, too high fees (see MSI report 2008).

Violence over the journalists

The issue rises concerns:	Yes (see MSI report 2008, Helsinki report 2006).	Re-emerging (cases of violence recently re-appeared, see MSI report).

Table 8: "The explanatory factors for the development of the media freedom in Macedonia, international level" (author's elaboration).

Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	Yes (CoE membership).
Was the issue part of the EU ***key*** short-term priorities?	No.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.
Amount of the EU financial support to the reform in general:	0.18.
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	0.07%.
Reform perceived by the IA as:	Part of the necessary reforms in transition to democracy.
The main concern guiding IA's intervention in the field:	Democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.
Were the recommendations made by the IA accepted?	Mainly.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	X
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	X

Table 9: "The explanatory factors for the development of media freedom in Serbia 2001-2003 and Serbia 2003-2007, international level" (author's elaboration).

	Serbia 2000-2003.	Serbia 2004-2007.
Was the rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	Yes (CoE membership).	-
Was the issue part of the EU ***key*** short-term priorities?	No.	No.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	-	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	Yes.	Yes.
Amount of the EU financial support to the reform in general:	4 millions.	17.05
Share of the resources dedicated to promote reform in the sector in the total of EU assistance to the country:	0.51%	1.3%
Reform perceived by the IA as:	Part of the necessary reforms in transition to democracy.	Part of the necessary reforms in transition to democracy.
The main concern guiding IA's intervention in the field:	Democratization.	Democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X	X
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.
Were the recommendations made by the IA accepted?	Partially (some have been intentionally omitted).	Partially (some have been intentionally omitted).
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	X	X
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	Yes.	Yes.

Table 10: "The explanatory factors for the development of media freedom in Macedonia, domestic level" (author's elaboration).

Domestic input for the change:	Weak.
Domestic actors pushing for the reform:	Present but weak (media associations, civil society).
Level of conflictuality of the issue:	Low.
Type of the conflict and main line of the conflict:	Rulers vs. Ruled.
Did the issue concern the deep divisions in society?	No.
Type of the issue (salience - positional):	Salience.
The main beneficiaries of the status quo:	Ruling elite.
The main beneficiaries of the change:	Citizens.
Is the existing status quo strongly delegitimized by all relevant actors?	X
Two or more alternative solutions present?	X
Political fluidity/stability (in terms of the perspective of power of the central actors):	Fluid.

Table 11: "The explanatory factors for the development of media freedom in Serbia 2001-2003 and Serbia 2003-2007, domestic level" (author's elaboration).

	Serbia 2000-2003.	Serbia 2004-2007.
Domestic input for the change:	Present (sensitivity on the issue particularly developed due to the media control during the regime.	Weak.
Domestic actors pushing for the reform:	Present (media associations, civil society, "new democratic elite").	Preset but weak (media associations, civil society).
Level of conflictuality of the issue:	Low.	Low.
Type of the conflict and main line of the conflict::	Rules vs. Ruled.	Rulers vs. Ruled.
Did the issue concern the deep divisions in society?	No.	No.
Type of the issue (salience - positional):	Salience.	Salience.
The main beneficiaries of the status quo:	Ruling elite.	Ruling elite.
The main beneficiaries of the change:	Citizens.	Citizens.
Is the existing status quo strongly delegitimized by all relevant actors?	Yes.	X
Two or more alternative solutions present?	X	X
Political fluidity/stability (in terms of the perspective of power of the central actors)?	Fluid.	Stable.

Table 12: "The development of media freedom in Macedonia, outcomes" (author's elaboration).

The procedure of law drafting:	-
The main deficiency in the adopted legislation:	Inadequacy of the mechanisms for media financing, persisting politicization, failure to properly implement the existing legislation.
The main beneficiaries of such deficiencies:	Ruling elite.
The status (2008):	Legislative framework settled, slow implementation.
The EU comment in the 2008 report:	With regard to *freedom of expression including freedom and pluralism of the media*, the legal framework continues to meet most international standards. However, poor implementation leads to weaknesses in practice. The economic and financial autonomy of the public service broadcaster and the regulatory body has still not been ensured. Most of the broadcast media are related to political or business interests, which affect their content. Ownership of the leading print media remains highly concentrated. The media continue to be subject to significant political interference.

Table 13: "The development of media freedom in Serbia 2001-2003 and Serbia 2004-2007, outcomes" (author's elaboration).

	Serbia 2000-2003.	Serbia 2004-2007.
The procedure of law drafting:		
The main deficiency in the adopted legislation:	Politicization still present, lack of implementation, lack of some essential pieces of legislation (law on access to public information).	Lack of implementation, some mechanisms of politicization still persisting, lack of side legislation.
The main beneficiaries of such deficiencies:	Ruling elite.	Ruling elite.
The status (2008):	-	Legislative framework needing some adjustment, slow implementation.
The EU comment in the 2008 report:		The Constitution contains guarantees for freedom of expression which are generally protected. However, the conditions for freedom of expression in Serbia were affected. The cases of violence, hate speech, maltreatment of the journalists, threats to journalists from the local officials and business elite. The law on media concentration and new legislation on advertising have not yet been adopted. Legislation on local self-government, adopted in December 2007, contains provisions in contradiction with the laws on broadcasting and public information and is undermining the privatization of municipally owned media. Allocation of regional frequencies has been completed, but the process lacked transparency in a number of cases.

11. CIVIL SECTOR DEVELOPMENT

"One of the most widespread myths on civil society is on its benign nature and democratic potential"
Vankovska, 2002.

Born in its current definition with the Scottish Enlightenment and the German Idealism[389], the concept of the civil society and the development of the civil sector increasingly gained the attention of the scholars of democratization, who saw in it a source from which opposition to the authoritarian regime can flourish[390]. For Linz it became one of the variables in distinguishing between different types of political regimes (we can thus recall Linz's distinction between the authoritarian and totalitarian regimes that differ also at a level of the regime's penetration into the space of civil society), while, for Linz and Stepan, a free and active civil society is a precondition for the democratization process[391]. The functions that the civil society plays in democracy are well represented in the work of Hadenius and Uggla (1999) who distinguish between its pluralist and educational functions.

> The pluralist function of the civil society "concerns the distribution of power in society and in political life. By combining and joining together, people obtain power resources. By organized collective action, groups can easier hold their own and protect their interests vis-à-vis other groups in society and vis-à-vis the origins of the state. An advanced civil society – one characterized by a multiplicity of well-developed popular associations – forms a bulwark against despotic tendencies in political life and serves as well as a defence against oppression" (Hadenius and Uggla, 1999, p. 1622).

To this we can compare Gellner's definition of the civil society as:

> "a cluster of institutions and associations strong enough to prevent tyranny, but which are, nonetheless, entered and left freely, rather than imposed by birth or sustained by awesome ritual." (Gellner, 1994).

[389] Bernhard, 1993.
[390] According to Gellner, the recent growing popularity of the concept is to be explained by the end of the Marxism and the importance that the civil society played in the end of the communistic regimes of Eastern Europe. See Plattner, 1995.
[391] See Linz and Stepan, 1996.

Or the conception, according to Foley and Edwards – present in the work of Kuron, Michnik (et al.) – where "special emphasis is put on civil society as a sphere of action that is independent of the state and that is capable – precisely for this reason – of energizing resistance to a tyrannical regime" (Foley and Edwards, 1996, p. 39)

The educational function of the civil society consists in its socialization function and in the learning and experience the individual derives from the participation to the citizens' associations and groups[392].

The development of the civil society is therefore tightly linked to the fundamental rights and freedoms (the right to association which makes it possible; the right to participation which is exercised, among other ways, also through participation to the citizens' associations), with the mechanisms of the citizens' influence on the decision-making process (here we recall the role that the interest groups and all other forms of associations play in fostering the communication between the citizens and the government, both in terms of expressing the citizens' preferences and in offering the government its knowledge and experience in the specific area of interest) and with the mechanisms for keeping the government accountable (see above).

In this chapter we will concentrate on the development of civil society in Macedonia and Serbia. We will pay attention to the environment in which the civil society is operating and particularly to the financial issues that appear to be a crucial point for understanding the features of the organizations. We will also face the problem of the inner potentials and values of the civil society. The civil society is by no mean necessarily civic or democratic, tolerant or transparent. As Vankovska stressed, in the countries of transition it can also have its "dark side", "very malign forms and elements (such as various criminal gangs, mafia groups often associated with state structures, private security actors etc)" (Vankovska, 2002, p. 5). Not to go any further, we might question on the democratic and civic potentials of associations such as "Blood and honour", "National machine", "Movement for the protection of the ICTY indictees" and similar, active in Serbia with a membership mainly on a voluntary basis. If the associations, unions, neighbourhood committees, interest groups, philanthropic enterprises of all sorts and all other forms of citizens' voluntary associations and NGOs are not democratic

[392] Foley and Edwards, 1996, identifies the origins of this conception of the civil society functions in the work of the eighteenth-century "Scottish moralists," including Adam Smith, Adam Ferguson, and Francis Hutcheson and in Tocqueville's "Democracy in America", whose "approach puts special emphasis on the ability of associational life in general and the habits of association in particular to foster patterns of civility in the actions of citizens in a democratic polity."

within, if they are united around non-democratic values, then, rather than support democracy, they might be a threat to it. Finally, we will also face the issue of the impact civil society can have on politics. Here we mainly refer to the role of civil society in influencing the policy, to its inclusion in the decision-making process and to its role in keeping the state accountable. Beside the resources we used in the other sections as well, such as legislations, programs, official governmental documents, media, we will also use the CIVICUS reports on the NGO development for Serbia and Macedonia. The extensiveness of this index (covering 4 dimensions of the civil society, 25 sub-dimensions with several indicators for each of the sub-dimensions) and the standardized questionnaires make the results comparable, while the use of the domestic experts allows the particularities of each state to emerge in the reports.

11.1. Serbia

11.1.1. Free to Associate According to 1982 Law

The development of the Serbian civil society can be traced back to XVIII-XIX century when the first Serbian NGOs are dating from. The first Serbian Law on the Freedom of Association was adopted in 1881. The spreading of liberalism in XIX century's Serbia also brought to the development of the non-governmental organizations, even though most of them had a short breath, ceasing their activity or being forbidden by the authorities[393].

With the establishment of the communistic mono-party regime, the pluralism in all sectors was limited and the civil sector was put under political control. While the period of communism was associated with the party organizing civil society and association (we can thus recall a number of "citizens" associations, all being actually organized, penetrated and controlled by the communist party by overlapping of membership and leadership), in Milošević's era, NGOs were suppressed, treated as a "national enemy" and delegitimized through the regime's media campaign, while at the same time their existence was spent abroad as a proof of the democratic character of the Serbian regime. The law basis of the civil sector were the Law on Associations at the level of the republic, adopted in 1982, and the federal Law on Citizens' Associations and Political Parties from 1990. The legislation ensured the political influence through administrative and police control over the registration, and forbidding the self-financing of the NGO, as well as any financing from abroad. A law forbid

[393] See Milivojević, 2006.

"treason", in a formulation that made any criticism towards the government be considered an action against the state. This allowed for maltreatment and police harassment of the NGOs' activists.

The activism of the NGOs also changed during the Nineties, the most popular being the anti-war associations and those concerned with Human Rights issues. Even though suppressed, civil society played an important role during the Nineties and during the overthrow of Milošević's regime, serving as a basis for the aggregation of the discontent. The citizens, disappointed with the political parties of the opposition and their incapacity to unite and face the regime, gave their support to civil movements and associations. In this light, a crucial role in the change of the regime was played by OTPOR, CeSID, G17 plus, and ANEM.

11.1.2. The (lack of) Changes

Unlike what was registered in other fields, the development and strength of the civil sector started to fade away with the change of the regime. The research on the participation of the citizens shows that the support to the civil sector and the participation also decreased. The political parties suppressed the civil society hampering all the merits for the transition, thus marginalizing the civil sector which now, after the regime changed, had a hard time re-identifying itself[394]. In the first two years after the change of the regime, the process of democratization saw a large involvement of the civil sector in the decision-making process. As we could see in the sections following the development in the other areas of policy included in this analysis, in the first two years after the change of government the law drafting saw the involvement of the civil sector, domestic experts, think-thank agencies, professional associations and other relevant NGOs being consulted during the legislative process (yet, in many cases, the adopted rules were amended in a much less democratic and participatory atmosphere). As time passed, the consultation of the civil actors was less and less used, even on questions of their competence, to result, as we could see in the other sections, excluding the NGO from the legislative process whenever possible from 2003, and particularly since 2004, up to today[395].

Immediately after the establishment of the new government, the Law on the Associations was drafted and adopted by the government already in 2001, but, due to the political struggle

[394] See Pavlović, 2005.
[395] Similar pattern was registered also in other researches. See Milivojević 2006.

within DOS and the obstruction of the reforms that followed, it was not adopted. The question of financing the civil sector and NGOs was also urgent to be faced, but here again the government failed to introduce mechanisms to ease the difficult financial situation many NGOs are facing. The taxation policy is considered one of the most discouraging parts of the legislation, as NGOs and associations are taxed as if they were business companies, while at the same time they are not allowed to make profit. No incentives for donors are provided, while VAT was calculated even on foreign aid until the 2005 governmental decision.

Under the pressures coming from the EU and CoE, Koštunica's government designed a new law draft in 2006, which again did not enter the assembly's agenda. The external and domestic NGO pressures were judged very important for including the "freedom of political party, union and any other form of association, as well as the right to stay out of any association" in the 2006 constitution. During Koštunica's government, however, the development of the civil society slowed down. Not only were they mainly excluded from the decision-making process even though the government was nominally devoted to fostering the social dialogue, but the delegitimization of some NGOs also took place. The approach used in Milošević's period, when the regime-hostile NGOs were accused to work against the domestic interest, re-emerged, and became particularly visible with the re-emerging of the nationalistic rhetorics. Some NGOs like the Helsinki Committee, the Belgrade centre for human rights, Women in black, the Humanitarian Law Centre were subject to violence and even officially condemned by the political elite for their critics to the government and particularly for their requests for prosecution of human rights violations and ethnic violence acts committed during the '90s. Further on, as Hanke wrote (2004), in Serbia, rather than social dialogue, we have a social monologue where the parties engaged in the process are not used to listening to their counterpart.

After the government changed, in 2007, the new government proceeded to draft the new document, which entered the assembly procedure on October 2007. While, as we saw, the law drafting was incredibly slow (the law is still pending, after seven years), on the other hand we can notice how the drafting process always saw the large participation of the NGOs, both international as well as domestic, and consultancy with OSCE, CoE and EU experts. The ruling elite, in presenting the law drafted in 2007, underlined the compliance with the European standards and the importance of the legislative framework, both for the democratisation process and for the compliance with the EU priorities[396]. The law remained

[396] http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=07&dd=21&nav_id=256282.

on the assembly's agenda, but the instable period of the second half of 2007 obstructed its adoption. Again, with the change of government, the new proposal was drafted again and entered the procedures in July 2008.

The civil sector in Serbia is still considered underdeveloped. Among the difficulties and shortcomings it is facing, we can list the decrease in the citizens' participation, lack of adequate legislative framework, lack of democratic practice with the NGOs and prevalence of the leadership (usually one man controlling the entire organization in an almost authoritarian manner), lack of financial resources, dependence on external donors, lack of transparency on the way NGOs function, especially, lack of transparency on the finances, lack of citizens' trust in the NGOs[397]. The state's financial support to the NGOs is growing, but the financial means from the state budget are not distributed in a transparent manner and are usually assigned to organizations formed before the '90s (Milivojević, 2006).

Of particular importance are the lack of democratic practices *within* the civil sector associations and the prevalence of the leadership. This way, not only is the participation hampered, but also the low institutionalization of the organization threatens their stability. "One man's associations" or "family businesses" are dying for the will of one man. The lack of financial resources and the prevalence of external donations move the lines of accountability and the NGOs "donation-seeking", without specialization in precise domains of action, implementing the programs imposed by the external donors' agenda (not always in line with the domestic necessity), accountable to the donor rather than to the citizens. Lacking the spirit of voluntarism and the value basis, the work in such NGOs is perceived as an employment. The external dependency and accountability on the other hand brings to the obscured transparency of the finances. Finally, the lack of civil basis for the functioning of one part of the NGOs actually opens the doors to corruption, as the rent-seeking behaviour penetrates the civil sector as well. According to the research World Association for the Citizens' Participation, 73% of the civil sector's representatives believed that corruption and corporativism are widespread among the NGOs[398]. It is obvious that in such assets both the citizens' trust and the citizens' participation to the civil sector are rather low, while the non-governmental organizations become much more successful in preaching than in applying democracy[399].

[397] See Milivojević, 2006.
[398] Milivojević, 2006, pp. 115.
[399] This point is well illustrated in Serbian scores in the CIVICUS index: while in the dimension "actions to promote democracy" Serbian NGOs are scoring 2 points on a points scale from 1 to 3, when it comes to "democratic practices within the NGOs" the score is only 1.

11.1.3. The EU and the Development of the Serbian Civil Society

As far as the role of the international community in the promotion of the right to association and NGOs position, the CoE, OSCE and EU pressures appear to be decisive. As the table shows, the pressures to build up a favourable environment for the development of the civil society were already present since the very first report of the EU, and the same is true for the CoE. Consultancy, advocacy and technical assistance in law making were offered and financial assistance, conditioned with the rule adoption, was made available as well. During the public debate over the law proposals, the government tended to underline the compliance with the international norms and the incorporation of the European standards into the law proposal. The pressure was also made in requesting the involvement of the civil sector in drafting the legislations, both through explicit requests and through criticisms of the policy making process whenever the public debate was avoided.

11.1.4. Assessment

The development of the legislative framework, aimed to guarantee the right to association and civil society development in Serbia, is still lacking. Obviously, the situation is much more favourable than it was in the previous periods, as the civil society is active, allowed, and at least tolerated. An exception are those associations calling for the protection of human rights that are active in criticizing the government and calling for the cooperation with ICTY, as the unpopularity of the issue among the citizens gives the government a chance to discredit and even attack or threaten those organizations without being punished by voters. On the other hand, organizations such as, for example, CeSID (Centre for free elections and democracy), that are active in the fields concerning democracy but not tackling the sensitive nationalistic issues, are much stronger and successful in exercising important pressures over the ruling elite.

However, while the freedom to association is not obstructed, the development of the civil sector is not supported either. The legislative framework is still the one inherited from Tito and Milošević, the law drafted since 2001, always in a very open procedure with the involvement of all relevant actors, yet the rule adoption is still lacking. Reluctant to open the policy making process to the influence of the present think-tanks and NGOs, yet conscious of the necessity for the participation and inclusion of the civil society in the democratic process, the ruling elite opted for the fake compliance in this field as well. Thus, while in the initial phases the civil society was consulted, round tables on the law drafts were often organized and apparently the NGOs and think-tanks relevant for the particular areas of policy involved, in

the final stage of the process the elite always managed either to avoid the public debate, or to amend the legislation at the last minute.

11.2. Macedonia

11.2.1. The Freedom of Association and Development of the NGO Sector

The freedom of association in Macedonia is guaranteed by the article 20 of the constitution adopted immediately after the independence. To the already existing associations of citizens, inherited from the previous regime, a series of newly formed non-governmental organizations, which number reached 3.300 units by 1998, were added (source: UNDP 1999). The "old" organizations thus co-existed with the "new, independent ones", the differences between the two being both in membership and type of activity: the organizations inherited from the previous regime were mainly religious, sports, cultural associations, with large membership and own property. The new ones were relatively smaller, more active in the advocacy, and often externally supported. As the independence and the transition attracted a series of foreign donors and international non-governmental organizations in the country, together with new resources, new themes arrived as well.

In 1998, the Law on Citizen Associations and Foundations was finally adopted, in order to adjust the legislative framework to the new democratic asset (until 1998 the civil sector was regulated by the Law on Social organizations and Citizen Associations from 1983). The delay in the adoption of the law was mainly a consequence of the necessity, in the first years after independence, to concentrate on the nation and state-building process, the ruling elite's agenda being mainly busy with questions concerning the international recognition and high politics. The drafting procedure was initiated in 1995, mainly driven by the domestic pressures where international actors such as the Council of Europe and the European Union played a role of democratic example for the domestic NGOs[400], while the membership in CoE created an external incentive for the rule adoption. The adopted law prescribed a rather simple and fast procedure for the registration of the civil society organizations, where five adult citizens can register an NGO in the court (rather than within police as envisaged by the previous legislation)[401]. The NGOs are not allowed to be politically active or to use their own property

[400] Interview with Klekovski, august 2008.
[401] See Michieli and Mesarič, 2007.

for fulfilling the goals of political parties (art3). The associations and foundations that are advocating or acting against the constitutional order of the Republic of Macedonia, that are spreading national, racial, religious hate and intolerance and those that are calling to armed violence, are forbidden.

While allowing for the simple registration of the associations and allowing their independent and free functioning, the financial treatment of NGOs failed to support the development of the civil society[402]. Thus, no tax incentives for donors were allowed, neither were tax benefits for CSOs envisaged in the legislation. While the support to the public institutions financed from the state budget or to the Red Cross was encouraged, with these donations being subtracted from the tax base, there were no other tax benefits for philanthropy. There was no possibility neither for citizens nor for enterprises to dedicate part of the tax paid to the state to a certain NGO. Such solution was mainly in line with what appears to be the standard approach of the Macedonian elite to the question of human, political and citizens' rights: "as far the question does not tackle the budget, everything is possible. But when it comes to the distribution of the resources, then the process is blocked and no change can be introduced"[403].

As far as the state support from the central budget to the NGOs is concerned, since 2002 the state prescribed a certain amount of budget to the support of the civil society. Some ministries also allocate part of the budget for supporting the relevant CSOs in their fields (like the Ministry of Environment and Urban Planning, or the Agency of Youth and Sports). The problem with these allocations of state funds is that they are allocated through non-transparent procedures and according to unclear criteria[404].

The difficult financial situation of the civil society associations only further strengthened the characteristic of the NGOs already established in the previous period: strong dependency on external donations.

This strong dependence on external support significantly shaped the Macedonian civil society. Combined with the very low diffusion of volunteerism in the society[405] (the social solidarity and civic engagement, spread and pressed by the state during the communism, left room for a new concept of extreme individualism), this donor dependency resulted in an

[402] According to Klekovski, finances are the most serious problem of the Macedonian civil society. See also the USAID NGO sustainability index according to which Macedonia's worst score is the financial viability.
[403] Interview with Klekovski, Skopje, august 2008.
[404] See Nuredinoska and Gaber-Damjanovska, 2005.
[405] See Klekovski, 2007.

"enterprise-, pragmatic approach" of citizens and NGO "volunteers" to the civil society. Thus, the opinion that the NGOs are a source of employment, which became the biggest motivation to get involved in certain activities of the organization, prevails. The program activities are thus undertaken only as far as they are sponsored, and are usually suspended once the funds are no longer available[406]. Obviously, there is a difference between different NGOs, where those that are based on values already existing in the society (here we still refer to those values that were inherited from the period of the communism) succeed in surviving as they are more successful in attracting volunteers, while those that were mainly externally driven are disappearing as funds and donations are vanishing. As it emerges from the interviews with the representatives of the civil sector, the future of the Macedonian civil society is in the membership and volunteer-based NGOs, feminist, religious, ethnic groups organizations being the most rooted in society and thus most easily adaptable to the lack of external support.

The donor-dependency also shifted the accountability of the NGOs: instead of being accountable to citizens and own members, they became accountable to donors. In drafting the programs of actions, the prevailing principle becomes the one that satisfies the criteria to be granted access to funds, this way meeting the priorities of the sponsors, and not those of the society. This results in further disappointment of the citizens towards the NGOs that, instead of pursuing the satisfaction of the local necessities, are following the donors' agenda, often drafted without a thorough understanding of the local needs. At the same time, it nurtured the pragmatist approach of the NGOs[407].

The lack of democratic practices within the organizations, the low level of transparency, a strong, sometimes almost authoritarian leadership, no change in the organization's leading structure, and the consequent lack of division between leadership and management are among the most serious weaknesses of the Macedonian civil sector. According to the research of the civil society development in Macedonia undertaken by MCIC, the limited application of the organization's statutes and acts, the problems of the conflict of interests, the separation of the non-executive and executive functions, favoritism and lack of supervision of the work are also among the problems often identified in the functioning NGOs. This brings to the conclusion

[406] See Bytyqi F. and Buldioski G., 2005.

[407] On the sponsor-oriented accountability, see Sazdovska S. and Zajazi K., 2005, on the international sponsors influence over the Macedonian civil society's agenda, see Freedom House report 2006. On the NGOs following the donor's agenda and neglecting their own declared program, see USAID, NGO sustainability index, report for Macedonia, 2007.

that the Macedonian NGOs are far better in promoting and advocating than in practicing democracy internally[408]. These functioning shortcomings are contributing to the de-legitimization of the civil society actors, further diminishing the civil sector's capacity to influence the decision makers and to keep them accountable for. In more recent times, the transparency of the financial resources of the NGOs was accepted and the practice to make their own financial reports available on-line was also established, but the problem of the democratic deficit still persist. The un-democratic, strong, almost authoritarian leadership/personal ownership persist as the most serious shortcoming that, beside the question of the democratic potentials of the undemocratic NGOs, also causes fears for the survival of these un-institutionalized organization still dependent on their (more or less) charismatic leaders[409].

When it comes to the influence on the decision-making process, a very negative trend in the previous period gradually started inverting since 2003 when, in order to meet the requests from the EU priorities, the government and the assembly decided some measures to involve citizens' associations in the decision-making process. The office was opened in the assembly to foster the communication between the NGOs and the MPs, and the decision to open the department for the cooperation between the Government and Civil Society Organization was adopted in 2004[410]. The importance of such decision (implemented and put in place only since 2007, when the Strategy for the Development of the Civil Society was adopted[411]) was enormous, as the process of the EU integrations and necessity to adopt the necessary legislation shifted the decision-making process from the assembly to the government, thus making the law drafting in the government the key (and the only) phase where it is possible to influence the content of the adopted rules[412].

Pushed by international pressures, the dialogue between the government and the NGOs appears to gradually grow in the last four years. As far as the influence over the decision-making process is concerned, while the civil sector organizations are rather active in influencing the policy, their success is limited. It reaches its maximum in the process of drafting the national strategies and the legislation in the field of human rights, in the social policies targeting some specific groups such as women, disabled, Roma, pensioners, while it is

[408] See Sazdovska and Zajazi, 2005.
[409] Interview with Klekovski, Skopje, august 2008.
[410] See Michieli and Mesarič, 2007.
[411] See Michieli and Mesarič, 2007.
[412] Interview with Klekovski, Skopje, august 2008.

far more limited and even absent when it comes to state budget, finances or the issues linked with the accountability of the state institutions. Similarly, the capacity to keep the government accountable for is also limited, with better results showed in holding the bureaucracy accountable for discriminatory acts when delivering public services and violations of human rights, and having almost no impact of the activities aiming to hold the state accountable for, particularly when corruption is concerned[413].

Finally, in 2006/2007, the legislative framework regulating the civil society was further improved in the government's effort to meet the EU requirements. The Law on Sponsorship and Donations was adopted (April 2006), allowing tax incentives for donations and sponsorship by a local or foreign legal or physical entity. The Civil Society Unit within the government was established and the strategy for cooperation with civil society, drafted in cooperation with the international actors and domestic NGOs, was adopted in June 2006 with an aim to pursue the strengthening of the civil society and their inclusion in the policy development process and in legislative drafting. The Law on Citizens Association and Foundations was amended in 2007, creating a central registry for the citizens' associations. The amendments introduced also aimed to "democratize" the NGOs by introducing mechanisms ensuring the transparency in functioning and prevent the conflict of interest situations within the NGOs.

The law implementation remains however difficult, while the criteria for the allocation of funds from the state budget to NGOs still remain un-transparent. The implementation of the Law on Donations and Sponsorships was blocked until the law regulating taxation was not amended. While the mechanisms fostering the financial transparency appear finally accepted by the NGOs, the leadership concentrated management and the problems of the nepotism, cronyism and protectionism linked with the authoritarian, personalistic NGOs persisted. The creation of the Central Register also showed some difficulties, as the very short time scheduled rose concerns over the possibility for the procedures to be respected and the revision of the existing statutes really undertaken. The legislation also allowed the Public Prosecutor or any other interested individual to initiate a court procedure to dissolve an NGO unable to fulfill its statutory provisions, a solution criticized by the domestic actors as they perceived it as a potential treat to the NGOs' autonomy.[414]

[413] See Gerasimovska – Kitanovska and Klekovski, 2005.
[414] See the USAID, NGO sustainability index, Macedonia, 2007.

Finally, as far as the activism and inclusion of the NGOs in the decision-making process is concerned, it depends on the type of the issues. The façade changes (incorporating some very liberal provisions as well) are rather easy to push forward, yet the problems arise when it comes to the issues with financial consequences, to the state budget or the distribution of power. In these areas, the inclusion of the civil society and its capacity to influence the process is rather low[415].

11.2.2. International Actors and Development of the Civil Society

Seen Macedonia's civil society's financial dependency on external donors and sponsors, the importance of the international actors in the development of the civil sector in Macedonia is unquestionable. In this section we will only briefly observe the role of the European Union and Council of Europe.

Not unlike other questions concerning human rights, the first Law on the Citizens' Associations and Foundations appears to coincide in time with Macedonia's membership in the Council of Europe and adherence to the European Charter of Human Rights. Following the EU priorities concerning the civil society, the government started to undertake actions aiming to promote and foster the dialogue with civil society. Parallel to the conditionality of the partnership, other means of influence were used as well: a series of programs were put in place pushing the government for the further cooperation, education and training of the governmental staff, advocacy and assistance in law drafting were made available (on the activities see the EAR annual reports to EU commission). Financial assistance was also used through the CARDS programs. However, in the interviews with the representatives of the civil sector, it emerged that the civil sector appears to be the last of the EU's priorities in Macedonia, being mostly remembered only in those moments when the government and the state were in a crisis, in situations of the regime's emergency, or in those moments when the politicians undertake the course and step behind positions unfavored and undesired by the EU[416].

11.2.3. Development of Civil Society: Assessment

Similarly to all other areas concerning the human rights, in this field we identified two distinct moments: the first, immediately after the Macedonian ratification of the European

[415] From the interview with Klekovski, august 2008.

[416] Interview with Klekovski, Skopje, august 2008. On the impact of the EU on the human rights in Macedonia and on the civil society, see Novakova, 2007.

convention on human rights, that brought to the first settling of the legislative framework regulating the NGOs, and the second, whose traces can be found already in 2003, when the first effort to foster the dialogue between the government and the civil society was undertaken but finally brought to positive developments only in 2006-2007, when a series of positive steps in settling the legislative framework took place. Here again we have external pressures combined with active domestic change agents (the domestic NGOs) resulting in positive developments and government's efforts to meet the requirements of the external actors, at least in those fields, like human rights and protection of specific social groups, and in those phases of the policy making (like the development of national strategies) where the costs of such compliance for the ruling elite are lower. However, the nepotism, the lack of democratic practices *within* the civil sector, the suspect politicization and monopolization of the main NGOs rise concerns over the potential preferential access to the decision-making process only for those parts of the civil society that are supportive for the ruling elite.

11.3. A Comparative Assessment

The strengthening of the civil society in Serbia and Macedonia followed a similar pattern, resulting in a series of features (deficiencies) in the field common to both countries. With differences in degree, in both countries we registered:

1. International donors as the prevalent source of finances;
2. Consequential shift of the accountability from towards the citizens to towards external donors;
3. Consequential shift of attention from the domestic needs, association's values and programs to the external donor's agenda which is not necessarily in line with the situation on the ground;
4. This necessity for rent-seeking rather than value-seeking behavior further contributes to the concept of NGOs as business, sometimes "family business" ("family association" in which the director and the members of the board are all members of one family), and the concept of the engagement in the NGOs as a form of employment.

5. The consequential change of the relationships *within* the NGO. The establishment of the employer-employee relationship between the managerial part and the activists further hampers the already weakened democracy within the organizations. The prevalence of the charismatic founders of the association and the strength of a leader able to ensure the financial resources also contributes to the almost authoritarian dynamics within the associations;
6. Beside the lack of democratic practices, this also results in the low institutionalization of the associations whose capacity to survive their leader are questionable;
7. The transparency of the finances and the internal process is also hampered, resulting in the decrease of the citizens' respect for the work of the NGOs;
8. It is no surprise then that corruption is often believed to be spread in the civil sector as well, further hampering their participation.

This finding in the characteristics of the associations of civil society in the two countries induces us to ponder on the democratic capacity of those parts of the civil society dependent on external incentives. While independent from the state and government, the externally financed NGOs still do not necessarily articulate or express the citizen's preferences, do not allow the citizen's participation, do not serve the role they are supposed to serve in allowing the bottom-up communication and participation. This being the case, to what extent can the externally created civil society foster democracy? Similarly, we can contemplate the role that the international donors are playing. By financing the implementation of their own agenda's rather than allowing the bottom-up inputs, by adopting "one size fits all" templates of the promoted norms rather than analysing the local necessities, by searching for "servants" who would implement their programs rather than looking for "partners", are the international donors strengthening, or rather weakening the civil society in the transitional countries?

As far as the impact of the civil society is concerned, here again we find common patterns, in both cases the NGOs being much more successful in influencing the decision-making in the fields of fight against poverty and human rights protection, rather than in influencing the state budget or exercising control over the state or business sector.

As far as the differences between the two countries are concerned, Macedonia has a far better developed legislative framework which regulates the participation of the civil society, but at the same time this "consciousness" of the legislator appears combined with the lower potentials of the Macedonian civil sector. In Tab.2 we brought the results for the CIVICUS'

civil society index for the two countries. While Macedonia generally scores better than Serbia, we can notice that in few sub-dimensions Serbia's civil society is performing better, Serbia's backwardness on other dimensions increases the importance of this shift in pattern. While the better performance on the sub-dimension "basic freedoms and rights" is no longer relevant (the indicator was using the Freedom House index on the media freedoms from 2004, on which Serbia had a score as a free country, deteriorating in the media freedoms afterwards), other two sub-dimensions are telling an interesting story of the role and potentials of civil society in the two countries. Thus, Serbia's better performance in the dimensions "depth of citizens' participation" (1.3 : 0.7) is mainly a product of the much higher inclination of the Serbs to volunteer in the associations. Similarly, the difference on the dimension "socio-cultural context" (1.7 : 0.7) is a product of the much more diffuse civic consciousness among the citizens of Serbia. We should also consider the fact that the participation index in Serbia is lower in 2004, but Serbia experienced a much stronger mobilization of the citizens during the '90s. The importance of the social movements and civil sector in overthrowing Milošević's authoritarian regime testifies the capacities of the Serbian civil society. At the same time, the experience and participation during the regime of Milošević might also explain the comparatively higher civic consciousness and the higher inclination to volunteering of the Serbian citizens.

As far as the development of the legislative framework strengthening the civil sector in two countries is concerned, the difference in the results achieved in the two countries, rather than to the particularities of the sector, appears to be linked to the general characteristics of the anchoring process in two countries: the generally higher leverage of Macedonia to international pressure and the steps in the integration process (ratification of the CoE conventions, candidacy to the EU) opened the window of the opportunity through which the salience issues of the rather low level of conflictuality were easily pushed on the agenda. The opposition of the ruling elite, which is the main beneficiary of the situation of the weak civil sector, was significantly diminished due to the general weaknesses of the Macedonian civil sector and to the superficiality of the change. The difficult implementation and limitation of the civil society in its impact on the more salient issues are the result of an externally induced change.

Appendix

Table 1: "USAID, NGO sustainability index, 2007. Results for dimensions, for Serbia and Macedonia".

Macedonia	Dimension	Serbia
3.6	NGO Sustainability (total):	4.5
3.0	Legal Environment:	4.7
3.7	Organizational Capacity:	4.3
4.5	Financial Viability:	5.5
3.0	Advocacy:	4.0
3.9	Service Provision:	4.5
3.2	Infrastructure:	3.7
3.8	Public Image:	4.8

(The scale used is a 1 to 7 points scale, 1-3 Consolidation, 3-5 Mid-Transition, 5-7 Early Transition).

Table 2: "CIVICUS, Civil society index, per dimensions, for Serbia and Macedonia".

Macedonia	Dimension (sub-dimensions)	Serbia
1.5	*Structure*	*1.3*
0.7	Breadth of Citizens Participation:	1.0
1.4	Depth of Citizens Participation:	1.3
1.7	Diversity of Civil Society Participants:	1.3
1.8	Level of Organization:	1.4
2	Inter-relations :	1.5
1.7	Resources :	1.3
1.4	*Environment:*	*1.5*
1.2	Political Context:	1.3
1.3	Basic Freedoms and Rights:	2.0
2.0	Socio-economic Context:	2.0
0.7	Socio-cultural Context :	1.7
2.0	Legal environment :	1.5
1.7	State-Civil Society Relations:	1.3
1.0	Private Sector-Civil Society Relations:	1.0
2.1	*Values:*	*1.6*
2 (2+2)	Democracy (inner democracy + democracy promotion):	1.5 (1+2)
1.3	Transparency:	1.0
2	Tolerance:	2.0
3	Non-Violence:	2.0
2.3	Gender equity:	1.7
2	Poverty Eradication:	1.0
2	Environmental Sustainability:	2.0
1.8	*Impact:*	*1.5*
1.7 (2+2+1)	Influencing Public Policy (social policy influence + human rights influence + budget influence):	1.0 (2+1+0)
0.5	Holding State and Private Corporations Accountable for:	1.5
1.5	Responding to Social Interests:	1.5
2.3	Empowering Citizens:	1.7
2	Meeting Societal Needs:	01.07.00

Source: For Macedonia: Klekovski (eds) 2005. For Serbia, Milivojević 2006. In red, the dimensions on which Serbia scores better than Macedonia.

Table 3: "EU assistance to the civil sector development in Serbia".

2002	3 millions	Training programme. Supplying basic office equipment for selected NGOs. Organizing joint workshops and seminars for NGOs and local administrations. Provision of grants (up to € 50,000) for selected NGO/local administration projects.	
2003	1 million	Inclusion in poverty reduction strategy process.	
2004	4 millions	Development of legal & financial framework for the civil society sector. Promoting the role of civil society in environmental protection. Capacity building for local partnership projects. Monitoring of grants.	
2005	2 millions	Support to Civil Society Advisory Committee Support to the Parliamentary Committee for Poverty Alleviation. Support to SIF monitoring units. Support to Social Innovation Fund (SIF).	Government needs to adopt the law on free associations and the law on legal status of foreign NGOs as well as the provision of tax incentives for NGO donations.
2006	4.5	Support to Social Innovation Fund. Support to Civil Society. Gender Mainstreaming.	The government continues to support the role of NGO's in the transformation of Serbian society and in fighting poverty. An Implementation Agreement is signed with the Ministry of Labour Employment and Social policy detailing how gender mainstreaming will be integrated into government policy and sustained after the project is complete.
2007	2	Strengthen cooperation between the professional organizations in Serbia and the EU.	Civil society organizations need to demonstrate their willingness to cooperate both amongst themselves and civil society organizations in the EU. Likewise, adequate EU institutions have to be willing to participate to joint projects and engage in social dialogue with local civil society organizations - CSOs and professional institutions need to have the capacity to carry out joint projects and produce quality project proposals - Call for proposals should encourage participation of relevant stakeholders such as the Ministry of Labour, Employment and Social Affairs, Socio-Economic Council, etc. in the selection process - Grants for civil society projects require 10% co-financing.
Totale	16.5 millions		

Source: European Agency for reconstruction report 2006, IPE documents 2007.

Table 4: "EU assistance to the civil sector development in Macedonia".

2002	1.8	NGO support centres in socially and economically deprived areas of the country.
2003	1.4 millions	Capacity building of civil society organizations. Support to a national civil society forum/platform.
2004	6.85	Establishment of Civil Society Unit within the Government. Support for the development of different civil society organizations.
Total	10 millions	

Source: European Agency for reconstruction report 2006, IPE documents 2007.

Table 5: "EU priorities in promoting the development of Serbian civil society".

2002	Outstanding issues concerning the NGO status and political or religious association should be resolved by mid 2002.
2003	No further delay in putting conditions in place for the full implementation of freedom of expression or concerning NGO status and aspects of the right of association.
2004	Create an environment (including financial aspects), conducive to the development of NGO and civil society organizations including social partners, notably by adopting the law on associations, and a law on the legal status of foreign NGOs.
2006	**Short-term priorities**: Encourage the development of civil society organizations financially and otherwise, notably by adopting the law on associations, and legislation on the legal status of foreign NGOs.
2007	**Short-term priorities**: Adopt legislation on associations and the legal status of NGOs, encourage the development of civil society organizations and regular dialogue with civil society on policy initiatives.
2008	**Short-term priorities**: Adopt legislation on associations and the legal status of NGOs, encourage the development of civil society organizations and regular dialogue with civil society on policy initiatives.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia, author's elaboration.

Table 6: "EU priorities in promoting the development of Macedonian civil society".

2002	Encourage development of civil society, and encourage the role of local NGOs.
2003	Encourage the development of civil society, and encourage the role of local NGOs.
2004	Encourage the development of civil society including social partners' organizations and their active participation to the decision-making processes.
2006	No priorities.
2007	**Short-term priorities**: Effectively implement the measures adopted to ensure transparency in the administration, in particular in the decision-making process, and further promote active participation by civil society.
2008	**Short-term priorities:** Effectively implement the measures adopted to ensure transparency in the administration, in particular in the decision-making process, and further promote active participation by civil society.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia, author's elaboration.

Table 7: "Development of Macedonian civil society, external factors" (author's elaboration).

Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	Yes (the period 98-99 coincides with the Macedonian ratification of the European Convention on Human Rights and to the period of the more intensive work on the legislation concerning the human, political, civil rights and liberties. The period from 2004 on coincides with the period in which Macedonia was preparing for the candidate status and opening of the negotiations.
Was the issue part of the EU ***key*** short-term priorities?	No.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.
Amount of the EU financial support to the reform in general:	10
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	4%
Reform perceived by the IA as:	Necessary for the democratization process.
The main concern guiding IA's intervention in the field:	Democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	No.
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.
Were the recommendations made by the IA accepted?	Mainly.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	X
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	X

Table 8: "Development of Serbian civil society, external factors" (author's elaboration).

Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	No.
Was the issue part of the EU ***key*** short-term priorities?	-
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	Yes.
Amount of the EU financial support to the reform in general:	16.05
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	1,34%
Reform perceived by the IA as:	Necessary for the democratization process.
The main concern guiding IA's intervention in the field:	Democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	No.
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.
Were the recommendations made by the IA accepted?	No.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	Published, yet without rising the public discussion.
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	X

Table 9: "Development of Macedonian civil society, domestic factors" (author's elaboration).

Domestic input for the change:	Present, yet not enough strong (civil society in the difficult situation).
Domestic actors pushing for the reform:	Present, weak (civil society).
Level of conflictuality of the issue:	Low.
Type of the conflict and main line of the conflict:	Civil society/ruling elite.
Did the issue concern the deep divisions in society?	No.
Type of the issue (salience - positional):	Salience.
The main beneficiaries of the status quo:	Ruling elite.
The main beneficiaries of the change:	Civil society.
Is the existing status quo strongly delegitimized by all relevant actors?	X
Two or more alternative solutions present?	X
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.

Table 10: "Development of Serbian civil society, domestic factors" (author's elaboration).

Domestic input for the change:	No.
Domestic actors pushing for the reform:	Present, weak (civil society).
Level of conflictuality of the issue:	Low.
Type of the conflict and main line of the conflict:	Civil society/ruling elite.
Did the issue concern the deep divisions in society?	No.
Type of the issue (salience - positional):	Salience.
The main beneficiaries of the status quo:	Ruling elite.
The main beneficiaries of the change:	Civil society.
Is the existing status quo strongly delegitimized by all relevant actors?	X
Two or more alternative solutions present?	X
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid/stable.

Table 11: "Development of Macedonian civil society, outcome" (author's elaboration).

The procedure of law drafting:	Inclusion of the NGO, domestic and foreign experts.
The main deficiency in the adopted legislation:	Difficult implementation.
The main beneficiaries of such deficiencies:	Ruling elite.
The status (2008):	Rule implementation.
The EU comment in the 2008 report:	With regard to **freedom of assembly and association,** the legal framework meets most international standards. There were no particular developments. However, involvement of civil society in the policy development process and in legislative drafting is minimal. Civil society organizations remain heavily dependent on foreign funding. The lack of sufficient financial resources is a serious constraint on their ability to deliver more professional and service-oriented activities. Government initiatives to support civil society development, such as tax relief, have not been forthcoming.

Table 12: "Development of Serbian civil society, outcome" (author's elaboration).

The procedure of law drafting:	Inclusion of the NGO, domestic and foreign experts.
The main deficiency in the legislation adopted:	Not adopted.
The main beneficiaries of such deficiencies:	-
The status (2008):	Rule adoption pending.
The EU comment in the 2008 report:	The Constitution guarantees **freedom of association**, including political and trade union associations. Laws implementing the new Constitution in this area have, however, not yet been adopted. New legislation on associations and on political organizations has yet to be adopted. The existing legislation imposes restrictions which go beyond the constitutional provisions.

12. THE INSTITUTION OF THE OMBUDSMAN

"Il diritto è tale se uno lo può far valere. In caso contrario è solo una velleità"
Carlo Enea Pezzoli.

The institution of the ombudsman is one of the modern democratic institutions, born in Sweden as an instrument of the parliamentary control over the administration in an effort to offer better protection of the citizens' rights. It is by no mean a *necessary* institution for democracy, but being an efficient mechanism of accountability and human rights protection, we decided to include it in the analysis of the development of democracy in the countries studied. After all, as Milosavljević stressed, the institution of the ombudsman is not conceivable in non-democratic societies, as its first function is to protect the citizens from the executive.

The function of the ombudsman institution can therefore be conceived as twofold: on the one hand it is one of the core mechanisms for the protection of the citizen's rights, particularly in their contact with the state's administration. But on the other hand (as we mentioned in the section dedicated to the fight against corruption) it is an important institution of control over the administration, the one that in its daily work examines possible abuses of power, ill treatment, irregularities, negligence and corruptive practices in the functioning of the administration. For this reason, Morlino and Sadurski (2008) include the institution of the Ombudsman among the core mechanisms for keeping the state accountable for. It is a non-juridical mechanism of control; important exactly in those spheres where the legal remedy offered by the judiciary is not available, mainly due to the more or less large level of discretionality in the law implementation that the administration enjoys.

In the following section we shall describe the process of introducing the institution of the ombudsman in Serbia and Macedonia and consider the factors that influence the manner in which these institutions perform their role: "the institutional design of their office

(appointment, term of office, powers, etc), material opportunities available to the Ombudsman, the attitude of other institutions, and the personal characteristics and skills of a person holding the office" (Morlino and Sadurski, 2008, p. 19). As a data source we will use the relevant legislation, the official documents, the reports issued by the ombudsmen, reports of the NGOs and International Actors active in the field, as well as the media, public statements and secondary literature.

12.1. Serbia

12.1.1. Penelope's Law Draft

In Serbian constitutional framework, the institutions were introduced already during the period of communism: immediately after the end of World War II, as the United Nations started the promotion of human rights, the communist intellectual elite undertook the studies about the institutions, which resulted in the introduction of the 1974 SFRY constitution of what can be called "a proletarian version of the ombudsman", an institution aimed to "defend the civic right for self-management". Even though the institution was far from that of the ombudsman as a guarantor of human rights, it is significant to remember that, with the dissolution of Yugoslavia, the institution was excluded from the constitutions of the newly created states (Macedonia being an exception). While the Serbian constitution of 1990 contains 42 articles dedicated to the protection of human rights, no mention of an ombudsman can be found. The first initiative to establish such institution was undertaken by Panić's federal government in 1993, but it failed together with the government's dismissal. It was obvious that in Milošević's "pseudo democratic" Serbia there was no place for an institution of this kind[417].

With the change of the regime, the protection of human rights gained a high place on the political agenda, especially due to strong international pressures. The first steps to establish the institution followed, but the path taken was not well designed, and did not result in coherent and harmonized reforms: in 2002 the basis for local and provincial ombudsman were created, the institution of the republic ombudsman, after a long delay, was established only in 2005 through ordinary legislation, while it was included in the constitution in 2006.

[417] See Radivojević 2003.

Nine years after the first proposal, in 2002 the initiative was undertaken for drafting the Law on Citizens Protector, as a response to the international pressure (beside the EU and CoE pressures, the law was also a part of the Pact for Stability of South East Europe obligations). The ombudsman was supposed to be elected by the qualified 2/3 majority, it was a single ombudsman for the whole republic with a maximum of 5 deputies, with no power of investigation or law initiative. It was supposed to have the power to initiate the procedure before constitutional court and to be consulted about the laws concerning human rights. The bill was proposed to the assembly on 25 November 2002, and seen the assembly's agenda, was supposed to be discussed and adopted by the beginning of 2003. The turbulent events in 2003 blocked the work of the parliament and the adoption of the law.

With the formation of Koštunica's government, the ministry of administration and local government initiated the drafting of the new version of the Law on Citizens' Defender, which also involved international actors such as OSCE, EU office in Belgrade and CoE. By request of the government, the Venice commission issued an assessment of the law draft, giving and identifying, however, the following shortcomings:

- Lack of constitutional basis for the institution
- The appointment and dismissal by the simple majority in the Parliament
- Too restrictive criteria for becoming ombudsperson
- Lack of functional immunity for the ombudsman and his/her deputies.
- Formulation "protectors of citizens" excluding the citizens
- The requirement of the exhaustion of judicial remedies before the ombudsperson can take up a complaint.
- Lack of investigative powers.

However, most of these shortcomings were not eliminated from the final version (point 5 was the only accepted one). The law was adopted in September 2005 (one month before Serbia and Montenegro were supposed to initiate the SAA negotiations), and voted by 131 deputies, both DS and SRS being against its adoption. The opposition criticized the lack of a constitutional basis of such office and underlined that the requirements for election were too restrictive (bachelor's degree in law; at least ten years of experience in jobs related to the purview of the Ombudsman; high moral character and qualifications; significant experience in the protection of civil rights). As Snežana Lakićević Stojačić, deputy of DS, noted, in Serbia,

where human rights protection started to develop only since 2000, it would be difficult to find a person with a ten-year experience that could be acceptable for the majority in the assembly.

The law designed one ombudsman for the whole country, with five deputies, appointed by a simple majority in the assembly following their proposal of the committee for constitutional questions. Among other instruments, the ombudsman also has the right to challenge the laws to CCs and to propose amendments in those cases when legislation is partially breaking human rights. The procedure prescribes that the ombudsman may initiate the procedure only after all other legal means have already been used, and within one year after the act of harming rights takes place. Given the inefficiency of the Serbian courts, this provision is rather critical.

Even though the Law on the Ombudsman was passed in 2005 and he was supposed to be appointed within 6 months, he was not appointed until June 29th 2007, showing that criticisms against the criteria were justified. In March 2006, on the DSS proposal to the committee for the constitutional issues, Saša Janković, a previously almost anonymous law consulter in the OSCE's department for democracy, was candidated. However, few days after his candidacy, Janković withdraw the application, due to the protest expressed by 15 NGOs that claimed both Janković not fulfilling the legal requirements and the procedure of candidacy to be un-transparent and conducted without consulting the civil sector (Belgrade center for human rights, Helsinki committee in Belgrade). As the Helsinki 2006 report on Serbia notes: "the doubts on the qualifications of the candidate and dubious election procedure without public debate undermined the whole idea of Ombudsman. The NGOs also demanded broader consultations in order for the right person to be elected to the position of Ombudsman… and not a person with a clear professional and moral integrity". No other nominations for the candidates took place until summer 2007, also due to the political moment: referendum in Montenegro, ceasing of the SAA negotiations, the crisis in the ruling government, constitution adoption and parliamentary elections that followed, together with the political crisis January – May 2007, all kept the elite and media attention away from the issue.

The constitution adopted in 2006 gave the constitutional basis for the institution of the ombudsman, while the changes introduced in summer 2007 harmonized the legislation with the constitution, removed some shortcomings in the legislation (the simple relative majority is changed into simple absolute majority, the immunity is also guaranteed), added the protection of minority rights to the competences of the ombudsman and gave the institution a power of legislative initiative. However, as the Venice Committee in its Comment on the new Serbian

Constitution underlines, **"**It is [….] regrettable that there is no protection of the Civic Defender against unjustified pre-term dismissal by the National Assembly. […], it seems questionable that the National Assembly supervises the Civic Defender and that the Civic Defender shall account for their work to the National Assembly."

Finally, in June 2007, the first Serbian ombudsman was appointed. It was again Saša Janković, whose appointment this time did not cause any protest, apparently due to the "more positive atmosphere in the assembly" and due to the consensus in the ruling coalition over the candidate (quoted from the speech of DSS spokesman Aligrudić, cited in Čekerevac, 2007).

After a two-year delay in appointing the ombudsman, the rule implementation continued to be obstructed by the government. The office experiences a series of difficulties in finding the elementary infrastructure (office, furniture), while the failure of the assembly to nominee the other defenders (appointed only in October 2008) and the lack of access to the budget revenues delayed the recruitment of the staff. In his report to the assembly in march 2008, Janković underlined the difficulties faced in the functioning, arguing that in most of the cases the lack of cooperation in the administration was a consequence of the lack of a comprehensive, systematic approach and organization, irresponsibility and even corruption on the different levels of the state apparatus.

It is still too soon to assess the role played by the ombudsman in Serbia, as the available data concern only the first few months of its functioning. In the report issued in march 2008, (covering the first six months of functioning), the ombudsman received about 400 complaints, 53.4% of which in the range of the ombudsman's competences and thus acted upon. Most of the complaints concerned the judiciary (121 complaints against the judiciary and prosecutor's office and about 70 complaints for the violation of the right on free trial), most of which concerned problems that are not in the competences of the ombudsman, who is not allowed to control the functioning of the judiciary (article 17). To date, no data are available on the compliance of the state administration on the recommendations made by the ombudsman.

12.1.2. The EU Role in the Establishment of the Ombudsman's Office

The establishment of the institution of the ombudsman was strongly requested by international actors, both through the channels of conditionality and the socialization process. Both the Council of Europe and the EU included the establishment of the ombudsman institution among the norms promoted through the conditionality, EU including the issue among the priorities of the EU partnership, CoE including the issue among Serbia and

Montenegro's post-accession obligations. The entire process was monitored, both institutions criticizing the delays and obstacles in establishing the institutions in their reports. The international actors also assisted in the drafting process, providing technical and legal assistance (CoE, OSCE, EU office UNHCR), and engaging in advocacy and law promoting activities. Material resources were also made available, as the international actors immediately initiated programs of institutional capacity building (EU dedicated one million of Euros to the development of the office, while OSCE signed the partnership agreement of support to the newly established office of Civic Defender)[418].

12.1.3. Assessment

As we could see, the process of establishing the ombudsman office in Serbia followed the pattern of most Serbian reforms. In the first period of transition, there was an initiative for the rule adoption that, however, failed mainly due to the prevalence of other issues on the agenda and the institutional crisis caused first by the conflict DSS vs. DS, then by the assassination of the prime minister and the crisis in the parliament's work. The newly elected government decided to re-initiate the entire process, by making a new draft in collaboration with the numerous international actors offering assistance. However, in those points where the international actor's opinion was threatening to harm the elite's interest, it was not taken into consideration. Thus, the shortcomings that concerned the appointment by the simple majority in the assembly (which would allow the ruling coalition to appoint the ombudsman unilaterally), the lack of civil society sector in the nomination of the candidate, the fact that he cannot make statements with "political content" (possibility of abuse due to the lack of clear formulation), the lack of immunity and the procedure that needs to be undertaken within one year and *only* after all other legal means were already used, all remained in the legislation to be, partially, changed with the 2007 amendments. As far as the rule implementation is considered, the delay in appointing the ombudsman, the effort made in 2005 to appoint the candidate without public debate, the failure to give the ombudsman access to the financial, human and technical resources even 5 months after his appointment, which blocked his functioning, are all signs of the immaturity of the Serbian democracy.

[418] On the role of the EU and CoE in promoting the institution of the ombudsman in Serbia, see Baracani, 2005, Dallara, 2008.

12.2. MACEDONIA

12.2.1. DEVELOPMENT

In the development of the institution of the ombudsman in Macedonia we can distinguish two crucial phases, one in 1997-1998, when this institution was established for the first time, and the second in 2003, when it was significantly changed in order to meet the new necessities after the signature of OFA.

As we already stressed when analyzing the Serbian case, the institution of the Ombudsman in the former Yugoslavia was not unknown, as the institution of the "defender of the civic right on self government" was introduced in the 1974 SFRY constitution and in the constitution of the republics (Macedonia as well).

With the independence, the new Macedonian constitution (1991) introduced the institution of the ombudsman as a defender of "the constitutional and legal freedoms and rights of citizens, obliged to intervene whenever the citizens' rights guaranteed by the constitution and laws were violated by bodies of state administration and by other bodies and organizations having public mandates"[419].

While envisaged by the constitution already in 1991, the ombudsman was not introduced in Macedonia until 1997, when the law that was necessary for its implementation, the Law on the Ombudsman, was adopted. After one year of preparation, the first ombudsperson was appointed in March 1998. At that time, the role of the ombudsman was only partially understood, as in the debate over the law some criticisms were advanced underlining the uselessness of such institution, proclaiming it as a "décor", incapable to ensure the protection of the human rights[420].

The first years of the ombudsman's presence showed these criticisms to be unfounded: about 1.500 written complaints per year were submitted to the ombudsman in the period 1998-2003[421]. At the same time, the low compliance of the state agencies with the ombudsman's recommendations, their slow response, their inadequate understanding of the role of the ombudsman represented major obstacles that the institution met in its work[422].

[419] Article 77 of the Macedonian constitution.
[420] See Naumovski, 2005, pp. 480.
[421] Data from the Ombudsman annual report 2007.
[422] See Naumovski, 2005, pp. 481. The Council of Europe report 2000 brings the data of the 66% of ombudsman recommendations being implemented by the administration in 1999.

After the 2001 violence, in order to meet the necessities deriving from the 2001 Ohrid Framework Agreement, the institution of the ombudsman underwent a significant change in its organization, appointment and functioning. As the OFA agreement introduced the non-discrimination and the equal representation of the ethnic communities in public bodies as a key principle of the peace agreement, the public attorney's function also changed. Beside the protection of the constitutional and legal rights of the citizens, the ombudsman was given the function of the guaranteeing the principle of equal representation too. Thus, according to the XI amendment to the constitution, it "shall give particular attention to safeguarding the principles of non-discrimination and equitable representation of communities in public bodies at all levels and in other areas of public life". The procedure of the appointment of the ombudsman was also changed in order to give the veto power to the Albanian minority through the application of the Badinter formula (this way the ombudsman and his deputies are appointed on the proposal of the parliamentary commission, by the absolute majority within which there must be a majority of votes of the minority's MPs).

Seen the importance of the institution in guaranteeing the implementation of OFA, the agreement also required that the Law on Public Attorney is amended in order to enlarge the institution's powers, to give it the right to contest the conformity of laws with the constitution before the Constitutional Court, to enable the ombudsman to suspend the execution of an administrative act pending decision of the competent court, to grant him access to and the opportunity to examine all official documents. The OFA also required the budget of the ombudsman to be separately voted by the assembly, the institution to be decentralized and the regional offices established.

As envisaged by the OFA, the amendments of the article 77 were adopted together with other amendments deriving from the OFA, and in 2003, after the drafting procedure that included the Council of Europe experts, the new Law on the Ombudsman was adopted. During the procedure of the law adoption, the opinion of the Venice Commission was required, and if we compare the draft law submitted to the commission's expert, the opinion adopted by the Venice Commission and the final document voted in the Macedonian assembly, we can see that all suggestions were included in the final version of the law.

As the new Law on Ombudsman prescribed the establishment of 6 regional offices (to be headed by the ombudsman's deputies), the budget of the institution significantly increased in order to ensure the correct implementation of the legislation (the 2004 ombudsman's budget

was almost double than that in 2003). The new ombudsperson was appointed through a new procedure, while the enlarged competencies and powers, as well as the growing consciousness among the citizens, resulted in an increase in the number of complaints submitted to the institution (from about 2000 in 2003-2004 to more than 3.000 complaints per year since 2005)[423].

In this period, however, some of the previously mentioned obstacles in the ombudsman's work persisted, particularly those concerning the administration's compliance with the ombudsman's recommendations and the communication with the Ministry of Interior. The lack of proper channels of communication between the MoI and the Ombudsman was particularly worrying, given the problems the Macedonian police had in ensuring respect for the human rights. The ethnic dimension of this conflict between the ministry of interior and the ombudsman should not be underestimated. As the new ombudsman, due to the Badinter procedure, was practically appointed by the Albanian minority party DUI (on the political background of the appointed ombudsman and the negative consequences of such decision see the Helsinki report, 2005), the conflict (ethnically based) in the ruling coalition over the police reform had its negative consequences on the communication between the ministry of interior (SDSM) and the ombudsman (appointed by DUI). The attack of the ministry of interior, that accused the ombudsman over the media for ethnic discrimination in its functioning (without bringing any evidence for such accusations), reflects the lack of understanding of this institution.

As the Helsinki Committee for Human Rights pointed out, the politically backed appointment of the ombudsman represented a serious problem in the functioning of the institution. According to this organization's report, in few cases, all of which politically biased, the ombudsman failed to protect the citizens' rights. In particular, it failed to act against the violation of the electoral rights that took place during the 2005 local elections (a potentially political decision, as the most severe violations took place where DUI won the majority) and it showed insufficient attention to the protection of the women's rights (electoral rights as well), children's rights and protection of the religious freedoms. He also showed particular permissivity to the party's influence in the procedure of the formation of the office and election of the deputies (see the Helsinki report, 2005).

The irregularities concerning the appointment procedure were also pointed out by the Helsinki Committee, as, contrary to the constitution and the Law on Ombudsman (article 6

[423] Data from the Ombudsman annual report, 2007.

and 8), the person appointed was a party member and without any experience in the field of protection of the human rights. During the appointment it was only the ethnic, and not the political consensus to be looked for, so that beside the hampered independence, the legitimacy of the institution was harmed as well[424].

While the politicization of the ombudsman institution remains a potential source of concern, the compliance with his recommendations significantly grew. Particularly, thanks to the governmental decision from January 2006, according to which all ministries are obliged to report on a three-monthly basis to the General Secretariat of the government on the implementation of recommendations or requests made by the Ombudsman, the response to the Ombudsman's requirements and recommendation significantly increased (see Tab.1).

We already underlined how the number of complaints received per year increased. The majority of these complaints concern the judiciary (23%) and police (17%), as well as the property ownership (15%) and labor relations (10.6%), while the majority of the complaints that were acted upon concerned property ownership (ombudsman report 2006). It is interesting to underline that while the complaints concerning the judiciary represented 23% of the total number of complaints, the share of the judiciary complaints acted upon makes only 5% of the total number of issues the ombudsman took action in.

12.2.2. The International Actors and Settling of Ombudsman

As we already stressed, the Council of Europe and the ratification of the Convention on Human rights in 1997 appeared to be the incentives that finally brought to the implementation of the article 77 of the Macedonian constitution. As the compliance with the law was rather weak (even though the institution was given an important role in OFA), since 2003 the EU included strengthening the ombudsman's office and improving the compliance with his recommendations among its priorities. With the increase in the compliance registered in 2006, the issue was omitted from the list of EU's priorities in 2007 (see Tab.3). From the reports of the European Agency for Reconstruction no EU funds appear to be dedicated to the institution of the Ombudsman in Macedonia.

12.2.3. Assessment

In the introduction and settling of the Ombudsman's office in the country we can distinguish two significant moments. The first concerns the period 1997-1998, when the Law

[424] See Daneva, 2004, p.2.

on the Ombudsman was finally adopted and the first ombudsperson appointed. Seen the country's recent membership in the Council of Europe and the signature of the charter on Human rights in 1997, it is possible to consider the settling of the ombudsman's office as part of the reforms fostering human and political rights in that period, partly also driven from the necessity to comply with the Human Rights Charter. However, the limited powers, the political control and the failure to respect the institution's recommendations seriously limited the impact of the institution.

The changes in the legislative framework regulating the functioning of the ombudsman and its strengthening that took place in the 2003 were a direct result of the peace agreement implementation. The Albanian minority parties were particularly interested in the rule adoption, as the office of the ombudsman was to be given the power to, among other, protect the principle of non-discrimination and equal representation. The role of the external actors was mainly a consulting one. In this case, the rule adoption was mainly driven by the existing necessity, while the concrete solutions were already included in the OFA. While the legislation adopted was praised for the improvements it introduced, namely in increasing the ombudsman's powers and strengthening the institutions, the political influence was not removed. The double majority (majority of MPs and majority of the ethnic minorities' MPs) procedure prescribed for the election of the institution, and the fact that the matter was already decided by the OFA, spared the country from the international actor's critics (unlike the case in Serbia) concerning the appointment procedure. But the provision revealed to be of utmost importance at the first election of the ombudsman, as the institution appeared to be a subject of the trade between the coalitional partners, ethnic and political principles prevailing even over the constitutionally prescribed requirements for the election.

It is interesting to point out the similarity the development of the ombudsman institution shares with other reforms tackling the ethnic issues: a particularly good compliance with those issues dealing with the questions of the minority, and fake compliance with those norms concerning the accountability mechanisms or partisan appointment where only a credible IA pressure could bring to compliance. Thus, as far as the strengthening of the institution of the ombudsman, the ethnic veto for its appointment, the use of the languages, the composition of the office and its territorial decentralization are concerned, the Albanian ethnic minority was rather strong in pushing the issues onto the agenda. The necessity to ensure the compliance of the state bodies with the ombudsman requirements appeared more dynamic and problematic,

and it was due to the joint external pressure and ombudsman's critics that the situation improved. Finally, as the international actors did not question the procedure for the appointment, no improvements were made in the field, so that the relatively problematic legislative solutions (ensuring only the ethnic, but not the political consensus and independency of the institution) are even more badly interpreted and implemented (resulting in a de-facto party control over the institution).

12.3. A Comparative Assessment

The introduction and development of the institution of the Ombudsman in Serbia and Macedonia followed rather different paths, resulting, as we will see, in the establishment of institutions with slightly different functions and styles.

Macedonia, which introduced the institution already in 1997-1998, is obviously far ahead of Serbia, with the institution now fully established and functioning, whereas the Serbian ombudsman is still facing the lack of elementary conditions for work. As we can notice from the Tabb.6, 7, 8 in the appendix, the Macedonian ombudsman appear stronger, more independent in its functioning, less limited in his powers and far better financially supported. The recent governmental decision further strengthened the institution increasing the compliance with his recommendations from about 40% to more than 80% (the comparison with Serbia is still impossible due to the very short record of functioning of the Serbian citizen's defender). Yet, as we could see from the report, Macedonian ombudsman's legitimacy was seriously shaken by the accusations coming from the leading human rights watchdog agencies about his politicization, selective application of the law and failure to protect the human rights of the citizens (see the main text). On the other hand there is Serbia's case, where the adoption of the Law on the Ombudsman was delayed for 5 years, his appointment took two more years, finding him an office and providing him the basic infrastructure to work took another year. Yet, the civic defender continues to be constantly present in the public debate and media, proposing the amendments to the legislations, criticizing the government and bringing to the public and to the attention of the authorities some of the issues concerning corruption and abuse of power, gaining the confidence of the citizens' and of the civil sector representatives'. This comparison clearly depicts the

ombudsman as an institution standing between the state administration and the citizens, the support from the one side inducing resistance from the other.

The different relation on the line citizens – ombudsman – government and, in particular, the deficiency in the functioning of the Macedonian civic defender, can be traced back to the changes in the role of the ombudsman after the 2001 OFA agreement. The strengthening of the institution was mainly guided by the importance that the ombudsman was given in the implementation of the peace agreement and in ensuring the equal representation of the Albanian ethnic minority in the state administration. Since the change actors promoting the institution of the ombudsman were mainly interested in the promotion of the narrow interests of their own inner-group, the role of the ombudsman was slightly altered.

APPENDIX

Table 1: "Share of ombudsman's recommendations followed by the Macedonian administration".

2002*	≈40%
2004**	≈40%
2005***	59.53%
2006***	75.42%
2007***	87.87%

* Approximate data deriving from the 2003 EU Stabilisation and Association report.

** Approximate data from the 2005 EU commission opinion on membership.

***Data from the Ombudsman annual report, elaborated by the author.

Table 3: "Ombudsman's share in the state budget, Serbia".

Year	Ombudsman's budget	State budget	Share
2007*	92.247.657	646.466.666.100	0,014%
2008	24.997.000	611.866.849.862	0,004%

(Source of data: Law on State Budget 2002. 2003, 2004, 2005, 2006, 2007, 2008, sluzbeni list Srbije). The amount refers to the budget prescribed, yet as the institution was formed only in July 2007 and the government obstructed the access to resources, only a small part of these resources were actually made available.

Table 2: "Ombudsman's share in the state budget, Macedonia".

Year	Ombudsman's budget	State budget	Share
2002	19.606.583	71.700.273.000	0.027%
2003	21.069.000	67.490.170.000	0.031%
2004	42.264.000	66.666.000.000	0.063%
2005	44.830.000	66.538.469.000	0.067%
2006	48.008.000	81.749.000.000	0.059%
2007	56.738.000	79.522.497.000	0.071%
2008	62.500.000	89.397.520.000	0.070%

Source of data: Law on State Budget 2002. 2003, 2004, 2005, 2006, 2007, 2008, Službeni vesnik.

Table 4: "EU priorities concerning the Ombudsman institution in Macedonia".

Year	Recommendation
2003	Value the role of the Ombudsman's Office in defence of the citizens and strengthen its means to tackle mismanagement and bad administration, including through the necessary legislative framework, and strengthen the independence of the Audit bodies.
2004	**Short-term priorities:** Fully implement the 2003 Law on the Ombudsman and complete the reform of the Ombudsman's office. Ensure that the Ombudsman's recommendations are followed.
2006	**Short-term priorities:** Ensure proper cooperation of all State bodies with the ombudsman and improve the follow-up given to his recommendations. Strengthen the cooperation between the Ministry of Interior and the ombudsman.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia, author's elaboration.

Table 5: "EU priorities concerning the Ombudsman institution in Serbia".

2002	Coordination should be established between all Ombudspersons.
2003	Creation of an ombudsman.
2004	**Short-term priorities**: adopt the legislation to set up an Ombudsman Office.
2006	**Short-term priorities**: Implement the legislation to set up an ombudsman's office.
2007	**Short-term priorities**: Establish a fully functioning ombudsman's office in line with the legislative requirements and ensure proper follow-up to the recommendations made by the ombudsman.
2008	**Short-term priorities**: Establish a fully functioning ombudsman's office in line with legislative requirements and ensure proper follow-up to the recommendations made by the ombudsman.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia, author's elaboration.

Table 6: "The ombudsman institution in Serbia and Macedonia: appointment, mandate, dismissal procedures according to the legislation in force" (author's elaboration).

Macedonia	*Dimension*	Serbia
Parliamentary committee.	*Candidacy:*	Parliamentary committee for the constitutional issues proposes a candidate among the candidates of the political groupings in parliament.
"A person who fulfills the general terms stipulated by the Law on Employment in the State Administration Bodies, a graduated lawyer who has a working experience in legal affairs of over nine years, whose activity has been proved in the sphere of protection of citizens' rights and has a good reputation for performing the duties of the Ombudsman".	*Requirements:*	Bachelor's degree in law; at least ten years of experience in jobs related to the purview of the Ombudsman; high moral character and qualifications; significant experience in the protection of civil rights.
In assembly, Badinter majority (majority vote of the total number of MPs, whereby there must be a majority of votes of the total number of MPs who belong to the non-majority communities in the Republic of Macedonia).	*Appointment:*	In assembly, absolute majority (majority of the votes of all deputies).
8 years, maximum 2 mandates.	*Mandate:*	5 years, maximum 2 mandates.
With the end of mandate, unless he/she is re-appointed In case of dismissal.	*The term in office ends:*	With the end of mandate, unless he/she is re-appointed; In case of death; By resigning from office; By meeting requirements for mandatory retirement pursuant to regulations on labour relations in government agencies; By dismissal; If he permanently loses his psycho-physical ability to perform the Ombudsman function – which is determined on the basis of a finding and opinion by a competent health centre; By loss of the status of citizen of Serbia, to be established upon the documentation of the relevant institution.
Dismissal by Badinter majority in the assembly, upon proposal of the relevant Committee. The dismissal takes place: 1) if he himself requests it; 2) if he is convicted of a criminal act with an unconditional sentence of imprisonment to at least six months; 3) if he permanently loses his psycho-physical ability to perform the Ombudsman function what is determined on the basis of a finding and opinion by a competent health centre; 4) if he fulfills the terms of retirement according to age; 5) due to incompetent, biased and unconscientiously performing the function of Ombudsman.	*The dismissal:*	By absolute majority in the assembly, on proposal of the Committee for the constitutional issues or following the proposal of the 1/3 of deputies. The dismissal can take place only: Due to incompetence or negligence in discharging his duties; If he engages in an activity which is incompatible with his office; If convicted for a criminal offence which makes him unsuitable for this function.

Table 7: "The ombudsman institution in Serbia and Macedonia, structure and finances, according to relevant legislation in force" (author's elaboration).

Macedonia	*Dimension:*	Serbia
1 ombudsman, deputies (whose number the ombudsperson proposes to the assembly).	*Office:*	1 ombudsman and 4 deputies.
Badinter majority in assembly, on proposal of the Civic Defender.	*Appointment of the deputies:*	By majority in assembly, on proposal of the Civic Defender.
Eventual assignment of responsibilities and specialization should be regulated by the act passed by the Ombudsman.	*Specialization of the deputies:*	Yes: Specialization particularity in the following fields: protection of the rights of detainees, gender equality, children's rights, rights of minorities, rights of persons with handicap.
Appointed by the Ombudsman. Conditions: the candidate must be from among the managing civil servants.	*Secretary General of the Ombudsman's office:*	The assembly should approve his nomination by ombudsman together with other provisions (see next point). Conditions: Bachelor degree in law, 5 years of experience, fulfills the conditions in work in the Public Administration.
Regulated by the act of Ombudsman (no veto players).	*Functioning of the professional office (organization and systematisation):*	To be regulated by the act of Ombudsman that enters into force after the parliament's approval.
6 regional organizational units for performance of the affairs within the Ombudsman's scope of competence: 1) Office of the Ombudsman in Tetovo; 2) Office of the Ombudsman in Kicevo; 3) Office of the Ombudsman in Stip; 4) Office of the Ombudsman in Strumica; 5) Office of the Ombudsman in Kumanovo; 6) Office of the Ombudsman in Bitola.	*Decentralization:*	The institution is centralized. The local self-governments and Autonomous Provinces are free to decide whether or not to adopt the institution of ombudsman. The national ombudsman is allowed to control the functioning of the local self-government in those municipalities where the local ombudsman do not exist, or out of the competencies of the local ombudsman.
From state budget. The Parliament vote on the section in the Budget for the purposes of the Ombudsman.	*Finances:*	From the state budget.
0,055%	*The share in the state budget (media):*	0.009% (for Serbia only 2007 and 2008).

Table 8: "The ombudsman institution in Serbia and Macedonia, competencies according to relevant legislation in force" (author's elaboration).

Macedonia	*Competencies:*	*Serbia*
None.	*Institutions omitted from the ombudsman's control:*	Citizens' defender is not entrusted to control the work of the National Assembly, President of Republic, Government, Constitutional Court, Judiciary and Public Prosecutor.
Yes.	*Power of legislative initiative:*	Yes.
Yes.	*Power to initiate procedure in front of CC for questioning the constitutionality of the legal acts:*	Yes.
Demand necessary explanations, information and evidence regarding the allegations in the submission; - Enter the office premises and have a direct insight into the files and affairs within their competence; - Interview an appointed or nominated person, an official and any other person who can provide certain information for the procedure; - Request the opinion of scientific and specialized institutions; - Undertake other actions and measures stipulated by law or another regulation.	*Investigative measures Ombudsman can undertake:*	Administrative authorities are obliged to cooperate with the ombudsman, to allow him the access to the offices, and to make him available all data relevant for the case in their possession, regardless the level of the secrecy of these acts, unless when it is forbidden by the law. The ombudsman, when exercising his duty, has a right to interview any employee of the administrative authorities.
The Ombudsman may visit at any time, without prior notice and approval, the prisons, educational-correctional facilities, and the bodies, organizations and institutions where the freedom of movement is restricted; to have insight of respect of human rights in these institutions, as well as to talk with the persons at these institutions without the presence of official persons.	*Access to the penal institutions:*	The Ombudsman shall have the authority, without prior notice, to undertake inspection of penal institutions and to speak in privacy with persons deprived of liberty.
- Give recommendations, proposals, opinions and indications on the manner of the removal of the determined infringements; - Propose that a certain procedure be implemented pursuant to law; - Raise an initiative for commencing disciplinary proceedings against an official, i.e. the responsible person; - Submit a request to the competent Public Prosecutor for initiation of a procedure in order to determine a criminal responsibility.	*Measures to be undertaken in the case when ombudsman concludes that the state administration bodies infringe the constitutional and legal rights of the person who put forward the submissio:n*	Publicly recommend the dismissal of an official who violated citizen's rights, or to file a motion to initiate disciplinary proceedings against the employee, in the case when the official or the employee refuse to cooperate with ombudsman or when the citizen have suffered significant material or other consequences; To file a motion to initiate misdemeanour, criminal or other appropriate proceedings against an official or employee of the administrative authorities when during his investigations he finds the elements of.

Table 9: "Introduction and development of Ombudsman in Macedonia, external factors"(author's elaboration).

	The first law on Ombudsman and settlement of the office 1997-1998	Strengthening of the ombudsman (2003-)
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	Yes.	Yes (the strengthening of the office coincide with the period of preparation for the EU candidate status and preparation for negotiations).
Was the issue part of the EU ***key*** short-term priorities?	X	No.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	X	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	X	No.
Amount of the EU financial support to the reform in general:	X	0
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	X	0%
Reform perceived by the IA as:	Instrument for HR protection and fight against corruption.	Essential part of OFA, instrument for HR protection and fight against corruption.
The main concern guiding IA's intervention in the field:	Democratization.	Security, democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X	Partially (no reaction on the political appointee of the ombudsperson).
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.
Were the recommendations made by the IA accepted?	X	Yes.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	X	X
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	X	The principle issue was OFA.

Table 10: "Introduction and development of Ombudsman in Serbia, external factors" (author's elaboration).

Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	X
Was the issue part of the EU ***key*** short-term priorities?	No.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.
Amount of the EU financial support to the reform in general:	0.00
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	0,00%
Reform perceived by the IA as:	Essential part of OFA, instrument for HR protection and fight against corruption.
The main concern guiding IA's intervention in the field:	Democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.
Were the recommendations made by the IA accepted?	Mainly (not all).
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	X
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	No.

Table 11: "Introduction and development of Ombudsman institution in Macedonia, domestic level" (author's elaboration).

	The first law on Ombudsman and settlement of the office 1997-1998	Strengthening of the ombudsman (2003-)
Domestic input for the change:	Not present.	Present: OFA.
Domestic actors pushing for the reform:	Weak (civil society).	Albanian ethnic minority.
Level of conflictuality of the issue:	Low.	Mid.
Type of the conflict and main line of the conflict:	Government (administration)/citizens.	Government (administration)/citizens; ethnic majority/ minorities.
Did the issue concern the deep divisions in society?	No.	Yes.
Type of the issue (salience - positional):	X	X
The main beneficiaries of the status quo:	Ruling elite/administration.	Ruling elite/administration.
The main beneficiaries of the change:	Citizens.	Citizens.
Is the existing status quo strongly delegitimized by all relevant actors?	X	X
Two or more alternative solutions present?	X	X
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.	Fluid.

Table 11: "Introduction and development of Ombudsman institution in Serbia, domestic level" (author's elaboration).

Domestic input for the change:	Non present.
Domestic actors pushing for the reform:	Weak (civil society).
Level of conflictuality of the issue:	Low.
Type of the conflict and main line of the conflict:	Government (administration)/citizens.
Did the issue concern the deep divisions in society?	No.
Type of the issue (salience - positional):	X
The main beneficiaries of the status quo:	Ruling elite/administration.
The main beneficiaries of the change:	Citizens.
Is the existing status quo strongly delegitimized by all relevant actors?	X
Two or more alternative solutions present?	X
Political fluidity/stability (in terms of the perspective of power of the central actors)	Stable.

Table 12: "Introduction and development of Ombudsman institution in Macedonia, outcome" (author's elaboration).

	The first law on Ombudsman and settlement of the office 1997-1998.	Strengthening of the ombudsman (2003-).
The procedure of law drafting:	X	X
The main deficiency in the adopted legislation:	Difficult implementation.	Failure to ensure the mechanism of the accountability. Corruption of the mechanisms (istituzione esiste, funziona, ma non svolge il proprio ruolo).
The main beneficiaries of such deficiencies:	Government/administration.	Government/administration.
The status (2008):	-	Rule adopted, implemented, yet, institution corrupted.
The EU comment in the 2008 report:		Positive assessment of the institution.

Table 13: "Introduction and development of Ombudsman institution in Serbia, outcome" (author's elaboration).

The procedure of law drafting:	X
The main deficiency in the adopted legislation:	Very slow, difficult and obstructed implementation.
The main beneficiaries of such deficiencies:	Government/administration.
The status (2008):	Rule adopted, difficult implementation.
The EU comment in the 2008 report:	The newly established Office of the State Ombudsman was very active. However, the Serbian authorities have not created the technical conditions necessary for proper functioning of the Office of the State Ombudsman. Temporary premises are inadequate and only 33 out of 64 posts have been filled. The Serbian administration lacks sufficient knowledge of the ombudsman institution and its role and has not paid sufficient attention to its recommendations.

13. THE RIGHT TO VOTE

"I order you to hold a free election, but forbid you to elect anyone but Richard my clerk"
Henry II, 1173.

Being free and fair elections considered a minimum requisite for democracy and a central piece of every procedural definition of democracy[425], there is no need to specify the reasons that induced us to include this dimension in our analysis. In the following sections we will analyse the electoral framework in the two countries, identifying the possible shortcomings in legislation or in implementation hampering the citizen's right to vote, and describing the possible changes in the legislative framework that took place from the year 2000 onwards. As the electoral system is an important element for understanding the political process in the two countries, we will analyse not only the part of the legislations concerning the citizens' possibility to exercise their right to vote, but also those parts concerning the electoral engineering.

13.1. Serbia

13.1.1. The Change of the Electoral Laws: Instability and Fluidity

As in many others fields of the reform, Serbia failed in introducing a comprehensive reform of the electoral system. Expected after the constitutional reform, the building up and harmonization of the existing pieces of law regulating the presidential, parliamentary and local elections actually never took place, due to the lack of consensus and reformist capacity of the governments formed after the adoption of the constitution. As we will see, since the end of Milošević's regime, several changes were introduced all the same. As there is no electoral codex or specific legislation concerning the voter's register, electoral commission etc, being

[425] See definitions of democracy offered by Dahl, Sartori, Schumpeter, to quote only some of the best known names in the political science.

these questions regulated in the legislation on local, parliamentary and presidential elections, we will follow the changes introduced in these laws, paying attention both to the implications of the changes on the political system and on those parts that concern the citizens' right to vote and be voted, and the manner in which this right is exercised. As during Milošević the questions concerning the voters' register, the commission for counting the votes etc. were used for malversation of the votes, this side legislation was of crucial importance in the case of Serbia. According to the OSCE assessment of the electoral legislation in Serbia in 2000, the following shortcomings were among the most serious ones: the lack of a definition of the citizens of Serbia (highly problematic in the context of the dissolution of the SFRY, and the high number of reugees from both the former republics and Kosovo), municipal constituencies easily subject to gerrymandering, the failure to ensure the political plurality of the electoral commission, the failure to guarantee equal rights to the members of the electoral commission in administrating the elections, the inaccuracy of the voters' register (double entries, dead and unexisting people called to vote), the failure to ensure transparency in the process, inadequate rules regulating the electoral campaign in media for ensuring equal access, low level of the ballot's security etc. (see OSCE assessment on the electoral legislation in FRY and Serbia, 2000).

The first changes in the electoral laws after the overthrow of Milošević's regime took place prior to the parliamentary elections in December 2000. After Koštunica's victory in the federal presidential elections, the agreement over the transition period between DOS and the old elite was made. Part of the deal was the change of the Law on the Election of the Parliament Members. This new law, as assessed by OSCE, was written hastily with the coming parliamentary elections in mind, and failed to introduce all the recommendations made back in 1997. Analysing the electoral laws from 1990, 1992, 1997 and 2000, Jovanović noticed an important pattern marking the Serbian approach to the electoral reforms: all the introduced changes concerned the electoral engineering (the electoral formula, procedure of assigning the post, size of the electoral units etc), but no change was introduced in the rest of the settling, while the questions which mattered for the citizens' exercise of the right to vote (electoral administration, voters' register, financing of the electoral campaign, media etc) remained unchanged as they were considered *less important, technical details* (see Jovanović, 2003, p. 76).

The Law on the Parliamentary Elections adopted in 2000 established Serbia as one electoral constituency and increased the transparency and independence of the RIK (the

democratic opposition underlined both changes as necessary conditions for the December 2000 parliamentary elections to be free). The law also introduced the provision according to which the political parties enjoyed full control over the assignment of mandates and control over the mandates of the deputies (see also the section on the political system).

After the 2000 parliamentary elections in Serbia, the Democratic Opposition overtook the power on the republican level. A series of reforms followed, the reform of the electoral system being one of the issues on a list of changes to be introduced. However, the intention to undertake the constitutional reform (potentially bringing to changes in the political system as well) postponed the reform of the electoral legislative framework. In 2002, however, the political crisis caused by the failure to elect the president created an urgent necessity for a change in the Law on the Election of the President.

A part of the transitional agreement between DOS and Milošević regime achieved in October 2000 opted to leave the then president of Serbia Milutinović in office. Milutinovic's mandate expired in 2002, in a moment when DSS had already left DOS. The presidential elections were scheduled for 29/09/2002 and three candidates were running for the office: Koštunica, Labus and Šešelj, Koštunica and Labus passing to the second round. Koštunica won (more than 66% percent of votes), but the elections failed as the 50% turnout requirement was not met. The failure to elect the president not only created a crisis due to the vacant post of the president, but also revealed the serious shortcomings of the electoral system: Koštunica's DSS complained first to the RIK and then to the Constitutional court accusing serious shortcomings in the voters' register for faking the results. According to Koštunica, the voters' register was not up to date, containing many voters that actually did not exist, which at the end produced the failure of elections. The urgent needs to reform the "Milošević's electoral law", to bring the voters' register up to date and to abolish the turnout requirement could be read about in the media. The request to abolish the 50% turnout requirement, all together with serious concerns expressed, also came from the international community: OSCE, EU, USA, the Council of Europe, all expressed their concern about the institutional crisis created in Serbia. The actors calling for the change in the Law on the Election of the President, beside the international community, were also the public and media, relevant NGOs like CESID and Koštunica's DSS. While the other actors were calling for the abolishment of the turnout requirement in the second round, DSS was requesting the complete abolishment of the turnout requirement. The opposition in parliament was against

the changes in the electoral law, while the rest of DOS was actually for a larger constitutional reforms, a change in the political system from the current semi-presidentialism to a parliamentary system with the president elected by the parliament and only after a large electoral reform.

The discussion over the change in the electoral laws came in a very delicate moment: the conflict between DOS and DSS that busted out in that period meant that no parliamentary support for the constitutional reform was possible, thus ruling out DOS's preference. As both the public opinion and the international community were requesting urgent actions, the ad hoc solution (i.e. to amend the law) was adopted.

The content of the amendments (maintaining the turnout request for the first round) was a result of DOS' intention to avoid the election of the president. Seen the powers granted to the president and the extremely difficult procedure for impeachment, seen the almost sure victory of Koštunica, at that time preferred by the citizens, it was convenient to opt for a formulation that would make both the election of the president and the obstruction of the elections possible. It became clear 2 days after the law was amended that DS had an intention to obstruct the election of the president by boycotting the first round: in the words of Ilić, urgent negotiations of DOS were called to discuss how it was possible that some partner in the coalition intended to boycott the elections called for by the parliament only two days before. As far as the issues concerning the voter's rights and the regularity of the elections are concerned, the law introduced the mid-layer of the electoral commission (positive development per se, yet controversial as this introduced two different electoral commissions in the country), it specified the procedure of vote-counting, it contributed to the increase of the transparency of the commission work. Considering the ruling elite's intention to avoid the election of the president, the legislation failed to introduce those norms that would make voting possible to the disabled, displaced, imprisoned, and citizen living abroad.

The DOS's plane functioned. The president of Serbia was not elected neither in 2002 nor in 2003. However, they were not able to ensure that the rest of the plan (constitutional reform, change of the political system) was also put into practice.

After the fall of Živković's government and the parliamentary elections in December 2003, a new institutional crisis threatened to shock the country. As the negotiations between DSS and DS failed, it became obvious that either the new government will include Milošević's SPS, or the parliament would be dismissed and new parliamentary elections called for. The risk of

repeated electoral results induced the elite to search for a change in the electoral laws. Nevertheless, the large electoral reform was again not available a possibility, as actually no parliamentary majority able to undertake the electoral reform existed. Another ad hoc solution was necessary.

If we analyse the changes introduced in 2004, it is clear that they were the fruit of an effort to encompass the institutional crisis: the Law on the President's Election was amended in order to remove the census requirement for the first round and ensure that the president will be elected, while the Law on the Parliamentary Elections was changed in order to ensure that repeated parliamentary elections would not produce identical compositions of the parliament. This way, the right to vote was for the first time granted to displaced people, to the imprisoned citizens, and mobile vote was introduced in order to ensure the participation of the ill and disabled, and the citizens living outside the country were also given the right to vote in consulates and embassies.

The census of 5% for the national minorities' political parties was abolished, ensuring their entering the assembly.

Even though the legislator significantly influenced the suffrage and improved the citizens' right to vote, the following facts argue in favour of Jovanović's thesis about the Serbian legislator being guided by institutional engineering concerns rather than by international standards:

- A clear guidance on reforming the electoral law existed in that period, but was not fully followed: the OSCE assessment of the December 2003 parliamentary elections also underlined a call for urgent changes in the Law on the Election of Representatives. Only the requirement to grant the right to vote to the disabled and displaced was included. Other two, according to OSCE's urgent priorities (both concerning the parliamentary control over the mandates), were not included.
- The whole debate on the electoral law was about the distribution of mandates: how high should the census be? Should the Diaspora be guaranteed the right to vote? Should national minorities be excluded from the census, or should the census be lowered, or even abolished for all parties? Should the turnout requirement be abolished?
- On the other hand, legislators omit to introduce some amendments that were requested by ODIHR, even though some of these already were part of the practice and

no political conflict existed on the subject (for example, the provisions regulating the monitoring of the elections or the intermediate level of electoral administration, at that time regulated by the act of the electoral commission).

By 2006 the constitutional reform finally took place, the constitutional law prescribed that the legislation regulating the local and presidential elections should be revised and the presidential and local elections called for prior to the 31/12/2007. The "reform" left aside the most important part of the legislation, that is the Law on the Parliamentary Election, which technical parts concerning the voters' register, the electoral commission and voting procedures apply to other pieces of legislation as well. Even though the joint opinion of the Venice Commission and OSCE was made available underlining the shortcomings in the legislation that should be faced, almost none of these recommendations were included. Moreover, the part of the Law on the Election of the President that was considered positive (the one on the existence of the intermediate level of the electoral administration) was also abolished and the less favorable solution contained in the Law on Parliamentary Elections included. Finally, as we could see in the part about the decentralization process, the Law on the Local Elections included the imperative mandate on the local level as well, seriously hampering the relationship between citizens and their local representatives. Even though proposals were made for the introduction of the majority system for the local elections, after the difficult party bargaining, the adopted document introduced only few changes (the most important of which was the threshold lowering from 5 to 3%).

According to the legislation in force, the electoral process in Serbia is regulated by the Law on Parliamentary Elections (the last amendments dating back to 2004), the Law on the Presidential Elections (2007) and the Law on Local Elections. The suffrage is universal (the right to vote being guaranteed to every Serbian citizen who has turned 18 years of age and has working capacity). The municipal civil status data are used for the compliance of the voters' register, the inclusion in the voting lists of voters who fulfilled the conditions for voting being automatic, passive and free of any charges. The voters' lists are maintained on a continuous basis by municipal authorities under the supervision of the Ministry of Public Administration and Self-Governance and in cooperation with the Ministry of Interior. The voters' list are a public document, available to the consultation of citizens. Even though the legislation prescribed that the voters' lists should be merged in a unified, computerized, permanent national register, this is still not the case. The lack of mechanisms capable to ensure the

accuracy and of a state body responsible for the maintenance of a central voters' list are criticized by both the international and the domestic experts.

As far as the candidacy procedure is concerned, every citizen with the right to vote has the right to be a candidate for the presidential, parliamentary or local elections. The Law on the Parliamentary Elections allows the political parties, coalitions, other political parties and groups of citizens to submit a list of candidates for the election. Each list has to be supported by 10.000 signatures, to be authenticated in a municipal court, for which a fee will be charged. The failure to specify the clear procedure for the authentication of signatures represents another shortcoming criticized in the Venice Commission opinion on the Serbian electoral legislation. Another point of concern is the lack of provisions allowing self-candidacy by independent candidates who, in order to be candidated, need the support of a group of citizens (easy to register) and the same 10.000 of signatures the political parties' lists are required.

Such evident discrimination of the independent candidates is fully in line with what the constitution recently established, that is the institution of an imperative mandate which gives the political parties full control over the deputies. The possibility for the party to assign the mandates regardless the position of the candidates on the list "limits the transparency of the system and gives political parties a disproportionately strong position vis-à-vis the candidates" (Venice Commission and OSCE/ODIHR joint opinion on the Serbian electoral legislation, point 43).

As far as the electoral administration is concerned, the electoral administration bodies are established at two levels. The Republican Electoral Commission is a permanent body, responsible to administer the elections. It has a permanent and extended composition. The 17 permanent members are appointed by the assembly for 4-year periods so as to reflect the composition of the parliament appointing the RIK (with limitation for any political party to have more than half of the members in the extended composition of the RIK). The permanent and additional members have equal voting rights and all decisions are to be taken with the majority. During the elections, each candidate/candidate's list appoints one representative to the commission. The Pooling Boards are the bodies that serve the voters at the polling stations on Election Day. Composed by the 3 permanent members, in the extended composition they include one representative of each candidates list. The electoral administration is considered to be satisfactory, except for the lack of legislative basis for the

functioning of evidently necessary intermediate level of the administration (in the need this layer is established by the decisions of the RIK).

As far as exercising the right to vote is concerned, the legislation does not prescribe any kind of incentives for fostering the participation to elections, and the turnout of the last two parliamentary elections was around 61%. The representation of the national minorities in the assembly is guaranteed by lifting the 5% census for the national minority parties, while mechanisms of positive discrimination of woman are fostered by the necessity for any candidates' list to include at least 30% of women.

13.1.2. EU Role in the Reform of the Electoral System

Since the first SAA report published, EU underlined the need for a reform of the electoral laws. As the OSCE/ODHIR are international actors specialized in the promotion of free and fair elections and monitoring of the electoral process, the EU opted to back the OSCE/ODIHR recommendations, calling for an electoral reform in the EU partnership that would respect them.

13.1.3. Assessment

Eight years after the democratic transition, Serbia still did not undertake a comprehensive reform of its electoral system. Even though the elections are usually considered free and fair, the legislative framework still presents some shortcomings, some of which are not faced simply due to inertia, while others (in particular those concerning the party control over the mandates) are difficult to face, considered the high interest of the political leaders in maintaining these norms.

In this light we can distinguish between the changes in the Law on the Presidential Election in 2002, where very strong international pressure, combined with the domestic political crisis and inner pressures, forced Đinđic's government to introduce amendments he actually was strongly against. The content of the amendments introduced and the subsequent obstruction annulled the desired effects the amendments were supposed to introduce, thus testifying the difficult implementation in cases of controversial compliance.

In other cases (the change in both 2004 and 2007), the situation was slightly different. The rule adoption mainly represented an ad-hoc solution to the internal necessities or the response to the domestic input. The role of international actors in the process being almost absent, the documents adopted were a product of intra-party bargaining. Very low (almost absent) was

the concern of the decision makers for the recommendations of the international actors or for the international standards and best practices concerning the citizens' political rights. In those matters where the legislation adopted meet the recommendations of the Venice Commission or OSCE/ODIHR (like for example the changes in 2004, when the citizens' right to vote was significantly improved by making the voting of a large category of citizens easier, and when the national minorities were granted a simpler procedure for gaining representation in the assembly), it was only due to the convenience that political elite recognized in these recommendations.

13.2. Macedonia

13.2.1. Electoral System Reform

Macedonia is the only case where the EU candidate status was granted to a country not complying with the minimum requirements for democracy: free and fair elections. Moreover, if we follow the reports of the international observers, and those of the EU, we can notice how the situation, at least by such reports, was actually degrading in time.

The extremely high stakes the elections have in the Macedonian context (seen the politicization of the state institutions and the oligarchy of the political parties) makes the electoral competition a zero sum fame, and the political leaders are further propelled to use *any* means to ensure their victory. This included continuous changes to the electoral system, a topic that, seen the lack of institutionalization and consolidation of the electoral formula, had its place in the agenda whenever new parliamentary elections were to be scheduled.

The Macedonian electoral system therefore submitted different changes since the establishment of democracy in 1991[426]. In line with what seemed to be a pattern of ex-communist societies, the first electoral law prescribed the majority electoral formula that was at the time perceived as the most advantageous for the ruling communist party. The justifications for such choice used by the ruling elite, paradoxically, concerned the attempt to avoid what very soon became the reality of the Macedonian party system: an atomized party system and the division on ethnic lines were perceived as the two threats to be avoided by the introduction of the majoritarian electoral system (see Janevska, 1999, p. 27). The majority

[426] On the electoral system in Macedonia, its development and impact in the period of nienties, please see Karakamiševa, 2004.

system in Macedonia not only failed in keeping the number of political parties low, an expectation nurtured by Duverger's thesis on the effects of majoritarian system, but it even failed to produce the majority in the assembly. The impulse for the change arrived from the government in 1993 and 1994 (before the second parliamentary elections), but the negotiations between the parties did not succeeded in ensuring the adoption of the government's proposal in the assembly.

In 1998, prior to the third parliamentary elections, the electoral reform was successfully put onto the agenda and the majoritarian system was replaced with the mixed one. The new electoral formula prescribed the two-round majoritarian system for 71% of the mandates and the proportional system with the 5% census for the remaining 29%. This "correction" to the majoritarian system was introduced in order to compensate for the loss suffered by those parties with territorially diffused support. The law was negotiated between the few large parties (Macedonian and Albanian), pushing aside the smaller parties who were unsatisfied with the solution, considering the law even more penalizing than the previous majoritarian system as the proportional formula settled a 5% census, while the requirement for entering the second round were also severed. The measures supposed to "increase the proportionality" produced a containing effect on the number of candidates (mainly thanks to the higher incentives for forming the coalitions) and a one-party majority in the assembly. Similarly to Serbia, while concentrated on the electoral engineering, the reform paid poor attention to questions concerning the implementation of the citizens' right to vote: the voters' register, the administrative capacity and democratic procedures of the electoral administration, and the ambiguities of the legislation that left room for abuse.

Another shift in the electoral system occurred prior to the fourth parliamentary elections in June 2002, when the Law on the Election of the Members of Parliament, the Law on Voters' List and the Law on Election Districts for the Election of the Members of Parliament were adopted.

The electoral reform of 2002 was a product of a series of conditions joining to bring to the electoral reform the political parties (especially the opposition ones) were starving for, especially after the 1999 presidential and 2000 local elections. The armed conflict in 2001 also had a deep impact on the political representation in the country and the party system, producing the fragmentation of the parliamentary parties, whose number doubled from 8 in 1998 to 16 that were sitting in the assembly in 2001 [427]. Combined with:

[427] See also Gaber-Damjanovska e Joveska, 2001.

- The need to revise the electoral code in line with the Ohrid Framework agreement;
- The need to, following the OFA, call for early elections, a rather unpopular decision the ruling elite was trying to delay as much as possible;
- The irregularities registered in the previous elections that were supposed to be handled and that international community, now with increased pressures, was requiring to be removed;
- The internal pressures for a more proportional electoral system finally saw the opening of an opportunity for changing the electoral system;

a window of opportunity for the electoral reform was opened. The government initiated the process in 2001, when the first law draft was sent to the assembly. After the assembly adopted the draft and gave their recommendations in April 2002, the draft passed on to the government to be completed.

The legislation represented a compromise reached between the parties signing the Ohrid framework agreement, and was a result of difficult negotiations undertaken in few steps. In the first phase the conflict implied the very design of the electoral system. The previous legislation (Law on the Election of the Members of Parliament 1998), requiring a second round for the election of 71% of the mandates distributed through majority formula, not only penalized the smaller parties, but was also said to allow the parties to prepare aggressive strategies and forbidden pressure methods for the second round where the winner is decided. The conflicting parts were therefore proposing different solutions, from the pure proportional system in the whole-country-one-constituency model, to maintaining the existing system with the elimination of the second round. The eventual solution agreed between the two largest Macedonian parties was the regional proportional model, dividing the country in six multi-member constituencies, where each constituency shall produce 20 parliamentarian seats. The Albanian minority parties (in this first phase requiring the whole-country-one-constituency-model), after the adjustment of the constituency boundaries, finally accepted the proposed solution (see Gaber-Damjanovska e Joveska, 2001).

The laws adopted included many of the OSCE's recommendations gaining the approval of the international actors and the elections that followed were considered "mainly in accordance with OSCE commitments and international standards for democratic elections" (OSCE report on the Macedonian parliamentary elections 2002). However, the following shortcomings in the legislation were identified: reliance on the judiciary for membership in the

election commissions; vague provisions about the role of security forces during the elections; ambiguous and inconsistent provisions for the annulment of results, repeat of elections, complaints and appeals; voting rights of non-resident citizens; and lack of enforcement of financial regulations.

The role of the security forces during the elections was an issue OSCE already criticized in its previous reports and in its opinion on the draft law that was submitted for the OSCE assessment. Seen the diffusion of the violence in the pooling station, that made police intervention necessary, new and old versions of the law allowed a stronger presence of the security forces. Yet the failure, notwithstanding the intensive external pressures on the issue, to unambiguously provide the legislative guarantees and limitation of the security forces authorizations on the elections day, opened the door to abuses. OSCE monitors registered numerous cases of intimidation of the voters and abuse of power by the ministry of interior during the subsequent parliamentary elections[428].

Another important issue that notwithstanding the IA's strong pressures remained unchanged concerned the inclusion of the judges in the electoral commissions. Both the previous and the 2002 legislation required the judges (some of which to be appointed by political parties) to be a part of the electoral commission. Seen the high politicization of Macedonia's judiciary, the independence of these members of the electoral commissions was highly compromised, while at the same time the membership in the electoral commission further exposed the judges to the pressures coming from the parties.

The last change in the electoral legislation took place in 2006 when the new electoral code, regulating the parliamentary, presidential and local elections, as well as all matters concerning the elections, was adopted.

The adoption of the electoral code seemed a necessary step in order to answer to the problems born after the 2005 local elections. The local elections for the position of mayors (to be conducted for the first time in the newly defined municipalities and with significantly increased powers of the local authorities) were judged by the parties as elections with a rather high stake. Immediately after the first round, two different assessments of the elections were heard in media: according to official and governmental resources, the elections were regular, fair and democratic. According to the opposition, several irregularities were registered, so that

[428] Thus, while on one hand intimidations and threats, in some cases even the open violence between the Albanian minority parties, made the intervention of the police necessary, on the other the case of the ministry of interior confiscating the materials form the factory enrolled to stamp the ballots clearly examples the need for limiting the police powers on the election day. See OSCE report on the Parliamentary elections 2002.

the elections were far from being fair or democratic. When the international community pronounced its judgment according to which even though in a high number of voting pools the elections were in line with the international standards, there were also very serious irregularities, particularly in the western part of the country; moreover, the media finally reported a series of "folklorish" events, such as re-filling the electoral boxes, attacks on the members of the electoral commission, joint voting, manipulations with the voting lists (see Hristova, 2005). The same year Macedonia was clearly told that it can be granted the position of candidate country only as a political recognition of the efforts made (particularly for the efforts in implementing OFA) but no negotiation would take place until the electoral process is brought in line with the international standards. The international community started to press for the identified shortcomings, both in the legislation but also in the administration, to be removed. Main criticisms referred to the guarantees of the universal and equal right to vote as well as the secrecy of voting (an issue of particular salience in the western parts of the country, mainly inhabited by the ethnic Albanians, where, due to the patriarchal and traditional society, women's rights were seriously undermined); the party influences and pressures over the election committees and the lack of independence of judges. The introduction of heavy sanctions for breaking the electoral laws was advocated in order to put a limit to the numerous violations of the democratic rules, especially in the western parts of the country.

The need to face the problem of electoral irregularities was used by the political parties to delegitimize the existing legislative framework and to initiate the negotiations for the electoral reform. As Gaber-Damjanovska and Janevska stressed, "Although reasons for the largest number of repeated irregularities should not be put on the account of the election law (as it is evident that the main thing lacking is the political will to lead proper elections), still the idea of revising the current law in order to facilitate the election process is imposed" (2005, p.15). The position that the irregularities were not caused by inadequate electoral legislation but by the lack of political will and of democratic capacities of the political parties to respect the law is also supported by Hristova, according to whom the lack of democratic capacity resulted in a situation where the relatively good legislative framework, leaving room for fair and democratic elections, was not implemented, and any ambiguity in the legislation was manipulated and abused (see Hristova, 2005). Mirčev (2005) went further claiming that not only the existing legislation, if implemented, would not permit the irregularities, but also, even if introduced,

the legislative changes would be of no use, given that the political parties are controlling all state institutions, administration, judiciary and electoral bodies. Introducing changes to the legislative framework, rather than a solution to the deficiencies of the electoral process, was an expression of the lack of basic consensus over the rules, present in Macedonia from the very beginning of its democracy, where the electoral laws were negotiated over and over each time the parliamentary elections were scheduled. As domestic authors noticed, the reforms of the electoral system in Macedonia followed the parliamentary elections (Jovevska, 2005), and not two subsequent legislatures were elected under the same rules (Mirčev, 2005). This legislative instability represents another source of serious undermining of the stability and legitimacy of the country's fragile democracy.

However, the political elite persisted in underlining the need to change the legislative framework, a solution partially stressed also by OSCE which, in reports concerning the presidential elections, already recommended the unification of the existing legislations in one electoral code in order to avoid the ambiguities deriving from the complicated, sometimes overlapping legislations. The electoral code was therefore adopted in March 2006, after a long period of debate, drafting, several working groups both partisan and expert, several rounds of reading and negotiations. Even though many parties were initially hoping to succeed in changing the electoral system, as a number of solutions were proposed (from the majoritarian system preferred by VMRO, to the one constituency proportional system), in the final version no changes to the electoral formula were introduced.

The most controversial issue in the political negotiations concerned the electoral administration, where the ruling parties advocated the electoral bodies composed by the administration, while the opposition, seen the high level of politicization of the state bureaucracy, pressed for a solution according to which the party representatives should be introduced in the committees.

The electoral code adopted was judged quite in line with the international standards, an important step further if compared to the previous solutions. It was praised as in line with the OSCE/ODIHR recommendations and considered capable to provide for an integrated and unitary legislative framework for the administration of most elections[429]. The criminal code was also amended in order to provide for heavier punishments for the violation of the codex. Yet, according to some experts, the Codex still did not achieve to address the shortcoming concerning the party financial spending (see also the part on the fight against corruption).

[429] See the joint comments by the Venice commission and OSCE/ODIHR on the Macedonian electoral code.

According to the electoral code in force, every Macedonian citizen of 18 years of age and working capacity is given the right to vote. The Register of Citizens represents the basis for the Register of Voters, with automatic data processing in an electronic form. The Ministry of Justice is assigned the task to keep the Voters' List. As the inclusion of the voters in the list is automatic, no financial charges are paid. While the provisions regulating the voters' list are rather satisfactory, the complicated procedures for introducing changes in the citizens' data in the Register of Citizens (causing the negligence of many citizens not to report an address change, migration and immigration) results in a difficult adjustment and updating of the data in the voters' list as well.

The right to candidacy is also allowed to all citizens who, beside fulfilling the conditions to vote, are also not serving a prison sentence for criminal offence and have not been given a final court decision for imprisonment of more than 6 months. The registration of the candidates' list give a slight advantage to those political parties that, once registered (a procedure requiring 500 signatures of citizens), can propose their lists, while groups made of citizens are required 1.000 signatures.

The electoral administration has three layers and includes the State Electoral Commission (SEC), the Municipal Electoral Commissions (MECs) and the Electoral Boards. The electoral code has changed the composition of the electoral administration, excluding the judges and political appointments and opting for a professional commission made of civil servants. The SEC is a permanent body that oversees general preparations for the election; it is made of 7 members (with a 5-year mandate) appointed by a 2/3 majority, thus requiring support from both the position and the oppositional parties. The Municipal Election Commissions are responsible for overseeing the election process in each municipality. They are made of 5 members randomly selected from the civil servants with higher education resident in the municipality. The mandate of the members also lasts 5 years. Finally, the electoral boards serve the voting pools on the election day. They are made of 5 members, appointed by the relevant MEC by random selection among state employees. The state and municipal commissions are given explicit supervisory authority over subordinate election bodies and officials and the disciplinary tools to be used in case the members of the electoral administration are involved in any electoral fraud.

However, these positive changes and the electoral code praised for the improvements it introduced has not prevented electoral irregularities and even some cases of violence to take

place. The main problems Macedonia had still remained unchanged, as the solutions adopted attempted to heal the effect, not the cause of the problem. The political elite still remains the same, and therefore the tendency to break the low or to abuse any ambiguity is still present. The elections undertaken in 2006, immediately after the adoption of the electoral code, were judged as fair, with the number of the irregularities, even though high, was much lower respect to the previous elections. However, these improvements were far from being durable, as the 2008 parliamentary elections showed. A series of irregularities, and the violence that took place (mainly in the constituencies with the Albanian majority[430]) clearly showed that Macedonia is still struggling to ensure the minimum conditions of democracy.

13.2.2. International Actor's Role

The international community was rather active in promoting free and fair elections in Macedonia, applying a large spectrum of tactics varying from socialization to strong conditionality. Unfortunately, as some domestic authors stressed, free and fair elections in Macedonia continue to seem "the necessity imposed from above, as if it was something we don't need, but, as *they* are requiring and insisting, we are *obliged* to comply" (Hristova, 2005, p. 2).

In the period prior to the 2005 local elections, the international actor mainly exercised its pressures through the socialization channels, through the OSCE/ODIHR recommendations, CoE and OSCE legal assistance, as well as advocating during the process of reforming the legislative framework.

Since 1991, the elections were generally judged as reasonably free and fair, with some problems to be faced, most of which appeared to be solved with the 2002 electoral reform. We can this way notice how generally positive assessments, in the reports of both the Council of Europe and European Union, were followed by the lack of strong conditionality on the issue, particularly in the period 2002-2005.

After the 2005 local elections, the international pressures on the issue significantly grew. The OSCE report raised concerns in the European regional organization as well as in the whole international community. The zero tolerance (a radically different approach, if

[430] See the OSCE/ODIHR report on the 2008 elections. According to the media, in the municipalities of Aracinovo and Cair "a war took place, rather than elections". One dead and several wounded people were the result on election day's eve.
See: http://www.utrinski.com.mk/default.asp?ItemID=2E42485B4E8CB94487687C08462979B3; http://www.utrinski.com.mk/default.asp?ItemID=B87D94391F34334B8D4704D8ABBE804C; http://www.utrinski.com.mk/?ItemID=86A90ADE636B814491868ABD17E18DD4.

compared to the IA's behaviour during the previous elections, where most of the irregularities registered in 2005 were present) is due to the importance these local elections had for the implementation of the troubled decentralization law adopted under the OFA (see the chapter on decentralization).

The reaction of the entire international community on the 2005 and 2008 irregularities was very strong. The Council of Europe underlined its concern on the issue and required Macedonia to ensure that the electoral process complies with the Council of Europe standards of freedom and fairness throughout its territory (Council of Europe, Resolution 1440, y. 2005). The European Union immediately included the free and fair election among its key short-term priorities in the partnership issued in 2006, and conditioned the opening of the negotiations with Macedonia to the establishment of free and fair elections, while NATO made clear that Macedonia's membership in this organization would depend on its capacity to organize free and fair elections. Such pressures were also undertaken through "unofficial" channels, the statement of the USA ambassador day before the 2006 elections clearly illustrating such trend: "If anybody wins or wants to win by manipulating the elections, it is clear that we, as US government, cannot see them as the ones that won without manipulations. I imagine that one of the consequences for them is that they will soon realize that their possibilities for a career shall be interrupted!"

However, similarly to the pattern we saw in 2002-2005, as the international actor's attention shifted to other issues, the 2008 elections showed that Macedonia is still far from fulfilling the requirements for opening the negotiations for the EU membership.

13.2.3. The Assessment of the Change

As we saw, the changes in the electoral law took place in almost all legislatures. Over the period from 2000 on, in which we are particularly interested, there were two electoral reforms with rather similar dynamics as far as the decision-making process is concerned.

The pressures of the external actor for the change in order to remove the irregularities of the electoral process were very strong in both reforms, yet, as the interest and concerns of the international actor slightly changed from one case to another, the result of the process also changed.

The first reform was started due to the political fluidity and the window of opportunity opened by the 2001 crisis and the Ohrid Framework agreement. OFA prescribed the parliamentary elections to be held before January 2002. The internal tensions and pressures in

order to change the electoral formula were strong, which brought to the situation where the need to ensure the consensus of all relevant actors (mainly the consensus of the biggest Macedonian and Albanian political parties, all crucial for the implementation of the OFA) was more important than ensuring the full compliance with the OSCE requirements.

As far as the change agents and the veto players involved in the process are concerned, we can observe how the same actors took both positions in the reform, in function of their interests. No change agents pushing for the reform for the sake of devotion to the democratic norms were there. A series of competitive alternative solutions were on the table, as the legislative reform concerned the electoral formula as well. The discussion concentrated on the electoral formula, and only partially on the "technical issues", and was mainly guided by concerns not about "what is the most democratic, most efficient formula", but on the partisan interests of the actors involved. As a result, some of the OSCE recommendations (such as the exclusion of the judiciary from the electoral commissions and its depoliticization) were not respected as all main political parties were strongly against them. The lack of political will to ensure free and fair elections and to cease the irregularities became more than obvious in the local elections in 2005.

The second electoral reform, again, was undertaken due to strong domestic and international pressures caused by blatant frauds and irregularities committed during the 2005 local elections. This time the pressure of the international community was decisive, and strong conditionality was used.

The electoral frauds during the 2005 elections resulted in a serious conflict between the government and the opposition, undermining and delegitimizing elections which were crucial for the implementation of the OFA. This way, free and fair elections in Macedonia were not only an issue concerning the democratization of the country, but, even more importantly, a crucial element to ensure its stability. Macedonia was thus guaranteed the EU candidate status, but it was made clear that the negotiations for the membership are conditioned by the free and fair elections. The Council of Europe, NATO, OSCE, as well as the single governments, all strongly pushed for the electoral reform.

The pressures of the international community were supported by the domestic public opinion, pushing the political parties to nominally confirm their determination to solve the problem. This time, even though the parties were pushing for substantial changes in the

electoral formula, the reform was mainly concentrated on the most "technical" issues of the matter.

The rule adopted (Electoral Code) was judged by the international community as a good legislative framework, and the first elections undertaken under the new legislation, supported by continuous international pressures, showed a much lower number of irregularities.

Again, the problem in Macedonia, as testified by the repeated violence in 2008, remains not in the legislation, but in the lack of political will (at least in the case of part of the elite) to comply with the democratic rules of the game. The Macedonian political elite is divided by ethnic lines in two distinct blocks. The Albanian party system and political elite show quite a low level of acceptance of democratic practices and respect for the rule of law (we can recall the electoral violence and frauds that are permanent characteristics of the Albanian municipalities, or the boycott of the parliament by the Albanian party, unsatisfied for staying out of the government, or the rumors about the effort to "divide" the spheres of influence between the Albanian leaders). We can question to what extent their Macedonian partners, forced to tolerate and legitimate such behavior from their Albanian colleagues in the name of peace and stability, are motivated to respect the democratic process themselves?

13.3. A Comparative Assessment

The comparison of Macedonian and Serbian electoral systems and elections represents a clear illustration of the importance the political will has for ensuring free and fair elections. The history of the Macedonian elections shows that a legislative framework responding to the highest international standards is far from being a sufficient condition for free elections to take place. It is important to underline that we are not facing some endemic characteristic of the Macedonian electorate doomed to violence or lack of political culture, as the relative fairness of 2006 elections in Macedonia testified on the political background of electoral irregularities, easily prevented by strong pressures from the international community. Similarly, the Serbian case, where the elections are judged as mainly free, fair and undertaken in a professional manner notwithstanding the shortcomings in the legislative framework, shows that even an imperfect legislative framework, if there is a political will for proper implementation, can produce a positive impact.

What can explain and account for the lack of political will to ensure a regular electoral process? First of all, we should underline that the pressures used in Macedonia in 2006 and 2008 are significantly different. In 2006 the general, official conditionality (country's membership in EU and NATO) as well as direct, unofficial pressure over the political leaders were exercised (we recall the USA representative's announcement and pressures over the political parties). In 2008 the prevalence of general incentives and weaker direct pressures over the political leadership showed that, for the politicians, the benefits deriving from achieving the power over the country are far higher than the benefits from Macedonia's entry into EU (or from the costs in terms of legitimacy and electoral support in case the integrations are delayed). Furthermore, the prevalence of the concentration of irregularities and violence cases in areas controlled by ethnic Albanians is striking[431]. If we pay attention to the Albanian spectrum of the Macedonian political system, we can notice very low levels of institutionalization of the responsibility (Ieraci, 2003). The prevalence of one party (PDP) in the period 1990-1998 ended with DPA rising to power in 1998, to be changed, after the armed conflict, with the leadership of the Albanian paramilitary units that formed the political party DUI, the strongest Albanian political party since 2001. The refusal of DUI to accept the VMRO-DPA government in 2006-2008 that dragged Macedonia into a deep political crisis, the rumour about the alleged deal proposal between DPA and DUI over the "division of the electoral results"[432], the prevalence of cases of violence in the areas prevalently inhabited by the Albanian ethnic minority, all testify the almost absent interiorization of the democratic norms into the Albanian spectrum of the political elite. In the interview with Hristova, it was underlined that even the Macedonian domestic experts are not sure what the mechanisms for the allocation of power within the Albanian ethnic community are, as it appears evident that the electoral will of the Albanian citizens is far from being the decisive factor in the struggle for power.

From this point of view, Serbia represents an opposite example, where, due to the ten-year long negative experience of electoral frauds and malversation, freedom and fairness of elections became better internalized (we can recall the three-month long protests in 1996-

[431] See the OSCE/ODIHR report on the 2008 elections.

[432] Gaber-Damjanovska and Jovevska quote the episode prior to the 2005 local elections when, during the unofficial meeting between DUI and DPA leaders, the DPA leadership offered Ahmeti the "victory on the parliamentary elections in exchange for the DPA's victory in the local elections". An offer refused by DUI seen the hegemonic position the party enjoys in the Albanian electorate. As a result, DUI won both the 2005 local, as well as the 2006 parliamentary elections, but was cut out of the government due to the choice of VMRO to take DPA as a coalitional partner.

1997, as well as the 2000 protests, which had the respect for the citizens' vote as their core). Such experience and relatively high levels of civic conscience when it comes to the fairness of the elections represent an important barrier for possible manipulations by the political elite. Limited in their possibility to manipulate the electoral results, the Serbian political elite opted to partially limit the effects of the citizen's vote by introducing sort of an imperative mandate (see the section on the political system). The limiting effects such provision creates on the implications of the citizens capacity to exercise their power through the electoral participation can be best observed on the effects this provision produces on a local level.

Turning to the process of building up the legislative framework, we can observe how, in Macedonia's case, the very strong international pressures since 2005 resulted in rule adoption without implementation. All recommendations made by the international experts were accepted and the legislative framework gained significant appraisals, the 2006 elections being rather fair, yet, as soon as the international attention was lowered, part of the political elite started to use violence again.

In Serbia, given the relatively positive assessment of the electoral process, the international pressures concerning the electoral reform were relatively weak. Thus, the changes in the electoral legislation were mainly driven by domestic factors, resulting in far more attention being paid to the electoral engineering rather than to other aspects of the electoral system.

APPENDIX

Table 1: "The EU priorities concerning the Serbian electoral system".

2002	Reform of electoral laws and provisions, a priority recommendation of the Council of Europe, should be brought into line with Council of Europe and OSCE standards by autumn 2002.
2003	Immediate revision of electoral laws and provisions, including media-related, to align with European standards.
2004	**Short-term priorities:** complete the ongoing electoral law reform (including electorate register) to bring the electoral system up to international standards notably by revising electoral laws, in line with the Office for Democratic Institutions and Human Rights recommendations and fully implementing legislation on financing of political parties.
2006	**Short-term priorities:** Complete the reform of the electoral law reform (including electoral register), in line with the recommendations of the Office for Democratic Institutions and Human Rights; fully implement legislation on financing of political parties.
2007	**Short-term priorities:** Complete the reform of the legal framework on elections (including the voters' register), bring it into line with the new constitutional requirements and ensure transparency and accountability of political party financing, including revision of the existing legislation to provide for sufficient monitoring and sanctions.
2008	**Short-term priorities:** Complete the reform of the legal framework on elections (including the voters' register), bring it into line with the new constitutional requirements and ensure transparency and accountability of political party financing, including revision of the existing legislation to provide for sufficient monitoring and sanctions.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia, my elaboration.

Table 2: "The EU priorities concerning the Macedonian electoral system".

2002	Adapt electoral legislation in line with OSCE/ODHIR recommendations before the next Parliamentary elections in 2002, and enforce implementation.
2003	None.
2004	None.
2006	**Key short-term priorities**: Implement the recommendations regarding the electoral process made by the OSCE-Office for democratic institutions and human rights in time for the next elections. **Short-term priorities:** Address the shortcomings identified in the electoral process and ensure a free and fair process in the next parliamentary elections. Prosecute frauds and irregularities.
2007	**Short-term priorities:** Ensure that the next presidential and municipal elections are conducted in accordance with the electoral code. Deliver prompt decisions on any election irregularities and impose penalties that will deter further cases.
2008	**Short-term priorities**: Ensure that all future elections are conducted in accordance with the electoral code. Deliver prompt decisions on any election irregularities and impose penalties that will deter further cases.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia, author's elaboration.

Table 3: "The EU financial support to the Macedonian electoral system".

2001	0.5 millions	Support to the 2002 Parliamentary elections (voter education outreach programme, procurement of polling materials and equipment, training of police force on how to handle an election).

Source: European Agency for reconstruction report 2006, IPE documents 2007.

Table 4: The election administration and right to vote in Serbia and Macedonia, according to relevant legislation in force" (author's elaboration).

Macedonia	*Dimension*	*Serbia*
Every citizen of the Republic of Macedonia who has turned 18 years of age and has working capacity.	*Universal suffrage: conditions for the right to vote:*	Every citizen of the Republic of Macedonia who has turned 18 years of age and has working Capacity (the law on parliamentary elections, as it is still not harmonized with the constitution, includes the Yugoslav citizenship and residence in Serbia).
The Voters' List (considered to be a public document the citizens have right to inspect and ask for the correction) is kept by the Ministry of Justice. It shall be maintained according to the Register of Citizens in the form of a Register of Voters, with automatic data processing in an electronic form. It is free of charge. According to OSCE due to the complicated procedures for changing the data in the Register of Citizens combined with high levels of migration and immigration, the register is not completely up to date.	*Voter's register:*	Conducted under a "passive" system. Voter lists (considered to be a public document the citizens have right to inspect and ask for the correction) are compiled from data contained in the municipal civil status offices. It is free of charge. The voter lists are maintained on a continuous basis by municipal authorities under the supervision of the Ministry of Public Administration and Self-Governance and in cooperation with the Ministry of Interior. The voter lists are to be merged in a unified, computerized, permanent national register, still to be implemented.
The right on candidacy is granted to any citizen that: is 18 years old; has working capacity; is not serving a prison sentence for committed criminal offence, and has not been given a final court decision for imprisonment of at least 6 months.	*Candidacy:*	The right on candidacy is granted to all citizens that enjoy the right to vote.
For the parliamentary elections: 1) Registered political parties can propose the candidate lists. 2) Group of citizens and independent candidates need 1.000 of signatures. For the presidential elections: Both party and independent candidates need of 10.000 signatures.	*Registration of Candidate Lists:*	For the parliamentary elections: registration requires 10.000 of signatures of voters (both for the lists of the political parties and for the lists of group of citizens) No clear criteria for assessing the validity of signatures. Presidential elections: 10.000 signatures.
Three tier administration: State Electoral Commission, Municipal Election Commission, Election Boards SEC since 2006: permanent body that oversees general preparations for the election; 7 members on 5 years mandate, appointed by 2/3 majority in assembly in process including both position and oppositional parties. Municipal Election Commissions: responsible for overseeing the election process in each municipality, 5 members randomly selected from the civil servants with higher education resident in the municipality for the five-year term. EB: 5 members, appointed by the relevant MEC upon the random selection from state employees.	*Electoral Administration:*	Two tier administration: Republican Electoral Commission and Polling Boards. Republican Electoral Commission: overall responsibility to administer the elections. 17 permanent members, appointed for 4 years. No political party can have more than half its members in the permanent composition of the REC. The extended composition of REC includes the 17 members and one representative of each candidate list submitted. Polling Boards: serve voters at polling stations on election day. 3 members in the permanent composition, while extended composition includes the representatives of each candidate list.

Table 5: "The exercise of the right to vote in Serbia and Macedonia".

Macedonia	*Dimension:*	Serbia
"In most of the country the elections were procedurally well administered. However, expectations of progress were not realized because of a failure by some election stakeholders and relevant authorities to prevent violent acts in predominantly ethnic Albanian areas, including limited and selective enforcement of laws. Organized efforts to violently disrupt the process early on election day made it impossible for voters in many locations to freely express their will" (OSCE/ODIHR report, 2008).	*Assessment of the most recent elections:*	"Overall conducted in line with OSCE commitments and other international standards for democratic elections, although they were overshadowed, in part, by a few negative aspects of the campaign. These elections provided a genuine opportunity for the citizens of Serbia to choose freely from a range of political parties and coalitions" (OSCE/ODIHR report, 2008).
Every third candidate on the list must be female. The family voting and violation of the women' right to vote in the Albanian parts of the country were registered.	*Participation of woman in most recent elections:*	Every 4th candidate on the list must be female (yet, as the assignment of mandates is under party control and do not respect the list of candidates, the % of women in the assembly is lower).
No particular provisions. The national minorities gained 38 seats in assembly (31%), of which 29 by Albanian parties, and 9 of other minorities competing in coalition with Macedonian parties.	*Participation of national minorities in most recent elections:*	The census of 5% is not imposed on the minorities. Seven deputies from the minority lists were elected, 2,8%.
Registered, one dead, several wounded, intimidation both during the vote and during the vote count.	*Cases of violence in most recent elections:*	Not registered.
Ballot boxes stolen in one pooling station, 30 cases of evident ballot stuffing, the ballot boxes and electoral materials stolen, voting assessed as bad in 8% of cases (20% in the predominantly ethnic Albanian areas), family voting high presence of unauthorized persons in pooling stations, counting assessed as bad or very bad in 15% of polling stations observed.	*Irregularities in most recent elections:*	Polling was generally conducted professionally and in a calm atmosphere, and co-operation between PB members and knowledge of procedures appeared to be high. The inadequate layout of numerous polling stations and the low quality of the ballot paper, were identified as potential source of risk for the secrecy of vote if not properly folded. Few cases of family voting in rural areas.

Source: For Macedonia, OSCE/ODIHR report on election in Macedonia, 2008, For Serbia, OSCE/ODIHR report on election in Serbia, 2008.

Table 6: "The electoral system in Serbia and Macedonia, according to the legislation on the parliamentary elections" (author's elaboration).

Macedonia	*Dimension:*	Serbia
120.	*Number of deputies:*	250.
Proportional, D'Hondt.	*Electoral formula:*	Proportional, D'Hondt.
6.	*Number of constituency:*	1.
20 deputies.	*Size of constituency:*	250 deputies.
None.	*Threshold:*	5%.
-	*Exemptions from census:*	National minorities.
The part of the ballot used for voting for election of Members of Parliament shall contain: Title of the ballot, number of election district, municipality and number of the polling station; Ordinal number, name and symbol (if any) of the list submitter; and Name and surname of the candidates on basis of data from the registry books, the voters should mark the ordinal number of the list submitter.	*Ballot:*	The ballot should contain: ordinal number placed in front of the name of the electoral list; the names of the electoral lists, according to the order determined in the general electoral list, with the name of the first candidate from the list; a remark stating that it is possible to vote for one list only, by circling the ordinal number in front of the name of the list.
Mandates assigned.	*Manner to assign the mandate:*	Party decide how to distribute the mandates.

Table 7: "The electoral reform in Macedonia, external factors" (author's elaboration).

	2002 reform	2006 reform
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.	Yes.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	No.	Yes.
Was the issue part of the EU ***key*** short-term priorities?	-	Yes.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.	No.
Amount of the EU financial support to the reform in general:	0,5.	-
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	0,76% (of the assistance made available in 2001).	-
Reform perceived by the IA as:	Part of the implementation of OFA.	Step in the process of the democratization and implementation of OFA.
The main concern guiding IA's intervention in the field:	Security/democratization.	Democratization as a mean of security.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	Partially (it accepted the lack of full compliance with IA's recommendations in order to respect the inter-ethnic agreement).	No.
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.
Were the recommendations made by the IA accepted?	Mainly.	Yes.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	Partially.	Yes.
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	X	Yes.

Table 8: "The electoral reform in Serbia, external factors" (author's elaboration).

	2002 amendments to the Law on the Election of President	2004 amendments to the Law on Parliamentary elections	2007 "electoral reform"
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.	No.	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	No.	No.	No.
Was the issue part of the EU ***key*** short-term priorities?	No.	No.	No.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes (combined with strong diplomatic pressure).	Yes.	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.	No.	No.
Amount of the EU financial support to the reform in general:	0.00	0.00	0.00
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	0,00%	0,00%	0,00%
Reform perceived by the IA as:	Necessary to avoid the political stagnation in the country.	Necessary in order to bring the legislation up to European standards and prevent from the eventual abuses.	Necessary in order to bring the legislation up to European standards and prevent from the eventual abuses.
The main concern guiding IA's intervention in the field:	Democratization.	Democratization.	Democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X	X	X
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.	Yes.
Were the recommendations made by the IA accepted?	Yes.	Partially.	Mainly not.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	No.	No.	No.
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	No.	No.	No.

Table 9: "The electoral reform in Macedonia, domestic factors" (author's elaboration).

	2002 reform	2006 reform
Domestic input for the change:	Present (OFA).	Present (the necessity to react to the irregularities 2005).
Domestic actors pushing for the reform:	Present (political parties).	Present yet weak (civil sector, citizens).
Level of conflictuality of the issue:	Mid.	X
Type of the conflict and main line of the conflict:	Intra-party, inter-ethnic.	X
Did the issue concern the deep divisions in society?	X	No.
Type of the issue (salience - positional):	Positional (the reform mainly concerned the electoral engineering).	Salience (the reform mainly concerned the "technical issues".
The main beneficiaries of the status quo:	X	Political parties.
The main beneficiaries of the change:	X	Citizens.
Is the existing status quo strongly delegitimized by all relevant actors?	Yes (all parties seeking for the change).	Yes (but only nominally).
Two or more alternative solutions present?		X
Political fluidity – stability (in terms of the perspective of power of the central actors)?	Fluid.	Fluid.

Table 10: "The electoral reform in Serbia, domestic factors" (author's elaboration).

	2002 amendments to the Law on the Election of President	2004 amendments to the Law on Parliamentary elections	2007 "electoral reform"
Domestic input for the change:	Present (institutional crisis after failure to elect the president).	Present (fear of the institutional crisis in case of the failure to appoint the government).	Present (constitutional reform).
Domestic actors pushing for the reform:	DSS, NGOs, media.	All political parties.	X
Level of conflictuality of the issue:	High.	Low.	High.
Type of the conflict and main line of the conflict:	Intra-party.	X	Intra-party.
Did the issue concern the deep divisions in society?	No.	No.	No.
Type of the issue (salience - positional):	Positional (the amendments concerned mainly the electoral engineering).	Positional (the amendments concerned mainly the electoral engineering).	Positional.
The main beneficiaries of the status quo:	Ruling DOS.	X	X
The main beneficiaries of the change:	X	Citizens (in particular those groups that saw their rights better protected).	Political parties.
Is the existing status quo strongly delegitimized by all relevant actors?	Yes.	X	No.
Two or more alternative solutions present?	Yes.	X	Yes.
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.	Fluid.	Fluid.

Table 11: "The electoral reform in Macedonia, outcomes" (author's elaboration).

	2002 reform	2006 reform
The procedure of law drafting:	Behind closed doors.	X
The main deficiency in the adopted legislation:	Participation of judges in the electoral administration, vague provisions about the role of security forces during elections; ambiguous and inconsistent provisions for the annulment of results, repeat of elections, complaints and appeals; the voting rights of non-resident citizens; the lack of enforcement of financial regulations.	In line with European standards, but the elections 2008 showed that the law was not respected.
The main beneficiaries of such deficiencies:	Political parties.	Political parties.
The status (2008):	-	Rule adoption successful; complete lack of rule implementation.
The EU comment in the 2008 report:		The OSCE-ODIHR election observation mission reported that key international standards were not met in the conduct of the elections. The electoral campaign was marred by several incidents. In many instances attacks on campaign offices were not investigated by the authorities, which conveyed a sense of impunity to the perpetrators. Effective remedies were not taken against the alleged violations.

Table 12: "The electoral reform in Serbia, outcomes" (author's elaboration).

	2002 amendments to the Law on the Election of President	2004 amendments to the Law on Parliamentary elections	2007 "electoral reform"
The procedure of law drafting:	X	X	X
The main deficiency in the adopted legislation:	Failure to meet existing shortcomings.	Failure to meet existing shortcomings.	Failure to meet existing shortcomings, introduction of the imperative mandate.
The main beneficiaries of such deficiencies:	X	X	Political parties.
The status (2008):	-	-	The electoral reform that would bring Serbian electoral legislation in line with European standards and remove the shortcomings still pending.
The EU comment in the 2008 report:			International observation bodies qualified the elections as largely in line with international standards, but noted that they were partly overshadowed by negative aspects of the campaign. The electoral framework has not been revised and is not in line with European standards. Existing legislation continues to allow parties to appoint members of parliament arbitrarily from their electoral lists after the elections instead of determining the order beforehand. This system lacks transparency and gives political parties full control over the candidates.

14. MINORITY RIGHTS

"The most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities"
Lord Acton Dalberg, 1877.

The fall of the communism and the spread of ethnic nationalism that, rather than dead as some expected it to be[433], revealed to be vivid and capable of deciding the destiny of the Eastern-Central Europe[434], brought the question of the minorities' rights to the centre of the debate in political philosophy, the moral arguments backing these rights and their relations to the underlying principles of liberal democracy[435]. The overlapping of the nation-state building and democratization, especially in the Balkans, the emergence of the nationalism and the ethnically-based violence that took place strengthened the attention on the minorities' rights as being fundamental for peace in the region. Ethnically and religiously heterogeneous, in an area where ethnicity was a key for the distribution of political power during the long history under the Ottoman and Habsburg empires, and where ethnicity continued, during the communism, to be a key for distributing rights and obligations[436], former Yugoslavia represented a case where the institutional legacies, combined with the perceptions of the nation and the "subversive structure of opportunities", became fertile ground for ethnic tensions and violence. The definition of political community, nation, nation-state and the status of minorities became a key problem in the democratization of the states created after the dissolution of Yugoslavia.

As Linz and Stepan (1996) argued, the nation building process raises serious threats to democratization, especially where the "ethnic" definition of the nation prevails in the context of a heterogeneous society. The definition of state as a state of the specific ethnic group, as opposed to the civic state, creates citizens of first and second order. It then results that the

[433] For example, Bunce (2005) argues that both Tismaneanu (1999) as well as Hobsbawm (1990) speak about communism as the ideology which, underlining the class conflict, might put an end to nationalism.

[434] According to Bunce it was at the same time an impetus for democratization and an obstacle to it, see Bunce, 1999.

[435] Kymlicka, 2001.

[436] See Bunce, 2005.

civic, inclusive definition of polity and state would avoid the problems of the ethnic conflict. Yet, as Bunce convincingly argued, the structure of the opportunities, the institutional setting and the process of dissolution of the former Yugoslavia made such more favourable solutions almost impossible to follow[437]. As Hayden showed, all the states created after the dissolution of Yugoslavia opted for the creation of nation-states with "constitutional nationalism", thus creating the problem of big national minorities and their treatment[438].

The inter-ethnic relations and the national minorities' rights are particularly relevant for the democratization process. The presence of different politicized (or potentially politicizable) ethnic/nation/religious communities can represent a problem for the polity-making process, offering competitive principles for the definition of the political community and rising conflict in the very foundations of the state. The existence of the conflict over the political community raises questions about democratization, because the universalistic, inclusive values upon which the democracy should be founded are in contradiction with the exclusivists' process of defining the nation and drawing a distinction between inner and outer groups. The definition of polity and citizenship is therefore a first step where the heterogeneity of the group might bring to a situation where the prevalence of the ethnic principle brings to the negation of the rights to the citizens with ethnic origins different from that of the majority.

Finally, even where, due to the universal suffrage, the minimal political, civil and human rights are granted to all, the members of the minorities might face practical problems in exercising their own rights, resulting in a de-facto marginalization and discrimination due to their minority status. The simplest example concerns the existence of linguistic minorities. The right to information, the right to vote, the day-to-day contacts with the state administration, all might become far more difficult for those citizens whose mother tongue is different from the standardized language. Seen the distributive implications and the political relevance of the language policy, the presence of policies aiming to decrease the marginalizing effects produced by the standardization of language for the linguistic minorities is of crucial importance for exercising their basic human, political and civil rights.

In the following sections we shall analyse the development of the minority rights in Serbia and Macedonia. As we will see, the two countries are very different on a level of ethnic heterogeneity, the relationship between the majority and minorities, the problems that brought to the rise of nationalism and specificities of the nation-building process.

[437] See Bunce, 1999, 2005, 2006.
[438] Hayden, 2001.

14.1. Serbia

14.1.1. Struggle Against the Others

Both due to the multiethnic character of Serbia, but particularly due to the nationalism that since the end of 80s was systematically developed through a series of nationalization policies creating and maintaining (but also created and maintained by) the regime, the protection of the several national minorities is one of the most important issues in the field of protection of the human rights in Serbia. The period of Milošević's regime, sinking its roots in nationalistic ideology, was a period of suppression of minority rights. The high regional concentration of minority groups was used as an excuse for centralization, ethnicity and "patriotism" being the criteria distinguishing between the citizens, while the secret services particularly kept an eye on those "who were not Serbs enough"[439].

The change of the regime saw a temporary decrease in the "ethnic temperature" in the country: the extreme nationalist parties lost the support and in the first two years of transition it appeared that Serbian nationalism was left to history.

The climate, however, changed, as the question of the cooperation with ICTY made the "soft nationalistic" DSS and "liberal" DS split up. The questions of the relation with Montenegro and the Kosovo status, together with the assassination of the Prime Minister Đinđić, gave nationalism new strength that grew together with the support to the nationalistic SRS, which was increasing since the presidential elections in 2003. The public opinion survey, measuring the (in)tolerance of majority, also showed this trend: while the level of ethnic distance showed a tendency to decrease in 2001 if compared to the previous period, in 2003 it increased again and remained stable until present. Thus, 42% of citizens do not accept Albanians as citizens of Serbia, while 25% do not want any contacts with Croats[440]. The results concerning the rights granted to the minorities are similar, perceived to be too wide: according to the Belgrade centre for human rights (report 2003): " 65% of citizens think that ethnic minorities in Serbia and Montenegro have the right to publish books and attend schools in their mother tongue, without any limitations, but only slightly more than half (52%) approve

[439] See http://www.b92.net/info/vesti/tema.php?yyyy=2006&mm=12&nav_id=224151.
[440] Beoradski Centar za Ljudska Prava, Report 2006.

of this policy; 16% would limit these rights to disloyal ethnic minorities, and 26% to all ethnic minorities"[441].

In such an atmosphere it is no surprise that on one side there is some compliance with the international standards and in the development of the institutional framework, while on the other the human rights agencies continue to report cases of serious violations of minority rights and ethnic based violence.

The minority rights protection was one of the few competencies of the federal level in FR Yugoslavia and in Serbia and Montenegro. As soon as the transition took place, the protection of human and minorities' rights became a priority of the new ruling elite, both as an attempt to distinguish themselves from the previous regime and in a response to the international (and at the time most significant CoE) pressures on the issue. Thus, already back in May 2001, Yugoslavia signed the Framework Convention on the Protection of National Minorities, while the federal assembly passed the Law on the Protection of Rights and Freedoms of the National Minorities in February 2002. The constitutional chart of the State Union of Serbia and Montenegro adoption in February 2003 also included, as one of the components, the Human and Minority Rights and Civil Liberties Charter that laid down all major provisions of the Law on the Protection of Rights and Freedoms of the National Minorities[442].

Other pieces of legislation also fostered the protection of the minority rights. In 2002, the Law on the Local Government established the institution of advisory ethnic councils, to be formed in all multi-ethnic municipalities. The councils were given the veto power in all matters concerning the minorities rights. The establishment of the local and provincial ombudsman in 2002 was also judged as a positive step in the field, even though the republic ombudsman with constitutional basis would obviously have been a better solution. Finally, as part of the police reform and management of the inter-ethnic conflict in the south Serbia, multi-ethnic policing (and, later, the administration) was established in cooperation with OSCE in Southern Serbia.

In the period after the adoption of the Constitutional Charter, the process of building the institutional capacity took place. On a federal level, the Ministry for Protection of Minority Rights of Yugoslavia now became one of the ministries of the state union. As the Law on Protection of Minorities allowed the minorities to form their national councils, the biggest minorities organized themselves creating such councils as a new instrument for the

[441] Beogradski Centar za Ljudska prava, Report 2002.
[442] Biserko (eds), 2005.

organization and protection of their rights. In 2004, the councils made a request to the Serbian government for the formation of the National Council for the Protection of Minorities, in line with the Constitutional Charter and the other State Union's legislation. It also proposed the inclusion of the national councils in the republican budget and changes in the electoral legislation that would ensure the mandate for at least one deputy for each of the national minority present in the council. Koštunica's government only partially met these suggestions. The National Council for the Protection of Minorities was formed, under the Prime Minister's control, but it remained inactive. The financing of the national councils entered the revised Law on Budget for 2004, with 41.400.000 dinars dedicated to the councils (341.000.000 were for the financing of political parties). The Law on the Election of Deputies adopted in 2004 removed the 5% census for the national minorities' parties, ensuring the representation of the largest minorities in the national assembly.

After the referendum for the independence of Montenegro, the state level Ministry for Protection of Human and Minority Rights was turned into a government's agency with the same powers, while the Law on Human Rights and National Minorities, as well as all international conventions signed by the State Union, became part of the Serbian legislation. The Venice Commission praised the constitution adopted in 2006 in those parts concerning the protection of the minorities' rights, but it called for proper implementation.

In this sense, the Law on National Councils drafted by the Agency for the Minority Rights surely isn't a positive step towards full substantive respect of minority rights. Both CoE experts and the representatives of national minorities criticized the law due to the mandatory tasks imposed to the councils. The Agency argues that the councils have delegated public authority, which implies increased obligation and control; whereas the experts and the minority representatives consider that most powers envisaged by the law are merely consultative, not involving public power *per se*. It was felt that the councils should be given adequate room to decide on their priorities and areas of work as opposed to the current provision according to which they are obliged to work on a certain number of issues or they will be closed down. This would likely be especially difficult for smaller minorities, or for those communities who may not wish to engage in all areas mentioned.

While the legislative framework was slowly developing and was judged rather positively, its implementation and the situation "on the grounds" was strongly undermined. Not only the ethnically inspired violence, but also the inadequate reaction of the state authorities brought to

the 2005 CoE resolution expressing concern for the lack of protection of human rights in Vojvodina[443]. The presence of ultra-nationalists in the public administration was the issue that rose the concern. Thus, according to the reports of the NGOs for human rights, the cases of a police officer abusing minorities, or lack of intervention in case of violation of minority rights, the tendency to label cases of ethnic discrimination and violence as "ordinary violence without ethnic basis" creates a climate where the national minorities do not feel safe. The behaviour of the political elite is also a matter of concern, as the national assembly often was a place of "hate speech", while the minister of religion accused the NGOs advocating the protection of human rights for their anti-serbism and for undermining the Serbian Orthodox Church. In 2005, the intolerance of the governmental officials against well-known human rights activists (Nataša Kandić, Sonja Biserko and Biljana Kovačević Vučo) resulted in physical assaults against them and verbal harassment in public places. The members of the ruling elite claimed that the leading human rights' organizations in Serbia were working for unspecified foreign powers, accusing them to be indifferent to the Serbian victims of war crimes, and underlining their "lack of patriotism"[444].

It is also necessary to mention that, in some cases, the protection of minority rights is undermined by the cleavages within the minorities: the number of members of the minorities, their "union" and the support from their motherland influence the level of their organizational capacity, and, by consequence, their ability to fight for their rights. The very difficult situation of Romas and Vlachs is mainly a product of their low level of instruction, the lack of a standardized written language and the conflict persisting within these groups. Seen the lack of organization of these minorities, they are underrepresented, and, especially the Romas, unprotected and often targets of violence.

The definition of Serbia as a nation state in the constitution of 2006 did not contribute to settle down the ethnic spirits, while the current discussion over the Kosovo status is used by the national elite in a manner similar to how the ethnic conflicts were used by Milošević. The ethnic tensions and nationalism of the majority group are in constant increase. At the same time, through induction, it also brings to the rise of nationalism of the national minorities, whose loyalty to the state is very narrow[445], an obvious response to the negative treatment the

[443] See also Dallara, 2008.
[444] See "Ljudska prava u primeni", Beogradski centar za ljudska prava, 2006, 2007.
[445] Miladinović's 2006 study of the minorities identifications shows that the members of the Serbian ethnic minorities are most identified with the motherland and with the local community, while their identification with the Serbian state is rather low.

national minorities enjoyed in Serbia. As Pešić (2006) underlines in an analysis of the origins of Serbian nationalism, it is the historically present application of double standards (territorial sovereignty mixed with the right to self-determination) that made the "Serbian dream" impossible. While Serbia continues to claim its rights over Kosovo (and the Albanian majority) as a historical part of the Serbian territory (right to territorial sovereignty), it also makes claims over those parts of Croatia and Bosnia that, due to the presence of the Serbs, should be given the "right to self-determination". This actually makes Serbia an impossible state, in an endless quest for an impossible ideal, which always keeps the "historic national question" on the agenda, nurturing the nationalism and ensuring, as it usually is the case, the strengthening of the executive. In this kind of environment, the undertaken policies of nation-building are usually hostile towards the national minorities whose loyalty to the state is therefore undermined[446].

14.1.2. The EU and Minority Rights

The international community (the Council of Europe and EU in particular) played and important role in fostering the minority rights in Serbia. The pressures were strong, being the question of minorities a rather important question in all regions of the Balkans. The Framework Convention on the Protection of National Minorities and the Law on Protection of Human and Minority Rights were a subject of the CoE conditionality, the Law on Local Government as well, while the EU was very active in designing the State Union Constitutional Charter (and its part on the protection of human rights).

The EU conditionality in this field concerned the lack of clarity of the constitutional distribution of competencies in the field, and the lack of legislative harmonization between different levels of government, which is considered a main obstacle in the protection of minority rights. As it was also the case with other priorities calling for the harmonization and coordination between state and republic level, the issue remained unsolved until it was put off the agenda due to the state disintegration. Other recommendations concerned the strengthening of the minority national councils, the promotion of good inter-ethnic relations (in particular by taking adequate measures in the field of education), promotion of the minorities' participation to the judiciary and in other law enforcement bodies. The response

[446] Not to go too far in history, the Hungarian national council expressed its concerns in autumn 2007, claiming that the police is making a list of the empty houses in Vojvodina with an aim to use them to solve the problems of the Serbs illegally staying in the EU countries that will rise after signing the accord on readmission. This would be only an example of the state's policy aiming to change the ethnic composition of Vojvodina.

the Serbian government gave to these issues was the already mentioned Law on National Councils (still in drafting procedures), the introduction of education for the police officers in the minorities' language (in order to increase the representatives of minorities in police), education training, and a series of programs in cooperation with international actors.

14.1.3. Assessment

The issue of the minorities' rights protection is a rather delicate issue in Serbia, given the ethnic conflicts in the Balkans as well as the persistence of nationalism, due to the unfinished settlement of the state borders. On the one hand, we can see the functioning of the rule adoption and relatively sensible answer of the government to the issue, while on the other, the radicalization of the majority group is bringing to both cases of ethnic violence, and, more concerning, radicalized statements of that part of political elite that seems prone to use the nationalist cause in the political struggle with the opponents. This resulted both in the increase of the minority rights on one side, and on the other the ethnic distance and the temperature got back to the levels prior to the transition.

The role of the international community was very strong in this field, while on the other hand there were no "official" veto players, which all resulted in a smooth adoption of the rule. The passage of the competence from a federal level to the Serbian state, can be potentially fruitful for further development, as it can contribute to increase the determinacy of the conditionality: we saw how the most important protection mechanisms remained poorly implemented due to the lack of coordination between state union and republic.

While the legislative guarantees of the minority rights saw some developments and will surely continue to develop, the potential ethnic conflict still persists. The definition of Serbia as a nation state and the shape of the Serbian nationalism are not helpful for the development of the minorities' loyalty towards the state, a necessary condition for all heterogeneous societies.

14.2. Macedonia

14.2.1. Minority Rights

The inter-ethnic relations and the minority rights represented the key issue of Macedonian difficult paths towards the democratization. The position of the ethnic Albanians, the rights

and status they aspired to and those they enjoyed were a crucial problem in the democratization of Macedonia, the ethnic violence ongoing in the neighborhood not being a positive environment at all.

The inter-ethnic relations and the status of ethnic Albanians actually monopolized the entire agenda concerning the protection of minority rights, concentrating the legislation in the field of the search for balance between the majority and the biggest minority in the country. In such asset, the other minorities on the territory (Serbs, Turks, Romas, Vlachs, Bosniaks and others) were beneficiaries (and victims) of the Albanians fight for rights and Macedonian's intention to balance and alienate the effects of the concessions made.

In almost all dimensions analyzed we underlined the importance of the ethnic conflict, showing how, in many cases, the key for understanding the changes in different fields of policy making in Macedonia is the relationship between the ethnic groups and the issues concerning the protection of the minority rights. We saw how the OFA tackled the issue, prescribing power-sharing mechanisms, the veto power to the minorities and the principle of equal representation in all state institutions. We saw how these provisions reflected on the parliament's functioning, their impact on the reforms of the police, territorial organization, administration and judiciary. In this paragraph we will face some of the remaining issues, like the legislation on citizenship, the use of the language, the use of the symbols of ethnic communities, the functioning of the committee for inter-ethnic relations, as well as the position of *other* ethnic minorities.

The Macedonian constitution from 1991, excluding the preamble where Macedonia is defined "the national state of the Macedonian people, where equality between all citizens and harmony between Macedonians and Albanians, Turks, Vlachs, Romas and other nationalities living on the territory are protected", adopted the civil and citizen-based approach to the organization of the state and protection of the rights, underlining the devotion to equality and protection of all citizens and offering the national minorities a series of cultural and political rights. However, the status of the ethnic minority was the issue that raised the greatest malcontent of the Albanian ethnic community, causing withdrawal of loyalty, boycott of the referendum on the independence and of the adoption of the constitution. Being the major ethnic community in the country, the Albanians were hoping for the status of constituent nation of a bi-national state, strongly opposing the formulation that defined Macedonia as a nation state. In 1992, the minority even organized a referendum asking for the independence

of the "Illirian Republic", the western part of Macedonia where the Albanian minority is concentrated, raising the distrust of the Macedonian majority.

The right to free expression of own ethnic origin, the right to expression of identity and ethnic particularities, the right to association and formation of political parties, the right to use own language, education in own language, use of the national minority language in state institutions on a local level, were all granted already in the 1991 constitution (articles 7, 8, 48, preamble). The council for the inter-ethnic relations was to be formed and was given the consultative role in all issues concerning the inter-ethnic relations. The council was to be made of 12 members: two of each for Albanians, Macedonians, Turks, Vlachs, Romas and two members of *other* minorities (article 79).

Even though the constitution did not prescribe the power-sharing mechanisms in the formation of the government, the practice was established according to which the Macedonian parties always included the ethnic Albanian party in the government. As far as the representation of the minority in the state institutions is concerned, we already underlined in other sections that it was a source of tensions between the ethnic groups, and was mainly a consequence of the lower level of education in the Albanian population[447]. The education on the languages of the national minorities was therefore identified as a key request of the ethnic Albanians and was a source of conflict between the two ethnic groups.

The education in the language of the ethnic minorities was guaranteed by the 1991 constitution, where the minorities were allowed primary, secondary and high school education in their own language (art 48). The formulation of article 48 strictly limited the education in the language of the ethnic minorities to primary and secondary education, leaving out academic education. Until 1992, the lack of universities in Albanian language in Macedonia was compensated with the existence of the University of Priština in Kosovo that offered formation in Albanian language, where most of the ethnic Albanian elite was educated. However, when Milošević denied the right to higher education in Albanian language, the source of qualified staff for teaching in the primary, secondary and high schools in Macedonia were cut away, increasing the pressure for formation of the university in Albanian language. Even though the Law on the University did forbid any discrimination of the ethnic communities, the Albanian pupils that received all their education in Albanian language meet de-facto obstacles once they were supposed to sustain the exam for entering the University

[447] On the demographic data and the levels of education across the ethnic groups, see Nikolovska and Siljanovska-Davkova, 2001.

and then to attend the lessons in Macedonian[448]. The introduction of the 10% minority quota in 1993 partially removed the obstacle to the access to the university education, but however it wasn't enough for satisfying the needs, neither was it a solution able to offer well-qualified staff, as the double standards followed in order to ensure that the quota is respected.

After further pressures and requests for the establishment of the university in Albanian language coming from the minority, and after the formation of the controversial private Albanian University in Tetovo in 1994, whose accreditations were refused by the government, in 1997 a special law was introduced in order to allow formation in the language of the minorities at the pedagogy faculty[449]. This provision brought only modest results, as the problem of higher education in minority language persisted and the pressures were growing stronger in time.

The use of the minorities' languages in the local municipalities was guaranteed by the article 7 of the constitution, allowing the official use of the language of the minority in those municipalities where the minorities are present in great number. The Law on Local Self-government from 1995 established that the language of the national minority should be used in a municipality where more than 20% of the citizens belong to that minority. The Law on the Use of Flags and Symbols Expressing the Ethnic Identity of the Members of the Minorities was also adopted in 1997, allowing these symbols to be exposed on the buildings of the local self-government in those municipalities where the ethnic community is a majority. During the national holidays, the symbols of the ethnic community were also allowed to be exposed together with the symbols of the state. The use of symbols in private life was allowed and not limited. As far as the functioning of the council for the inter-ethnic relations is concerned, while it was praised as a positive example in the Balkans struggling in the ethnic conflict, the institution however did not prove to be an efficient instrument for the establishment of the inter-ethnic dialogue[450]. As the 2001 ethnic violence testified, the council failed to serve its primary purpose.

The ethnic conflict that bursted in 2001 brought to the signature of OFA, that further increased the rights enjoyed by the minorities (in a, however, un-proportional way as the smaller minorities were not so successful in pushing their own issues onto the agenda). The

[448] See the European Union Commission service report, regional approach to the countries of South Eastern Europe, 1997.

[449] The staff for the primary and secondary school is enrolled from this faculty, while the teachers in high school are graduated from the faculties specialized in the subjects they are teaching.

[450] See the European Union Commission service report, regional approach to the countries of South Eastern Europe, 1997.

amendments agreed upon in the peace treaty tackled the use of the language (5th amendment), the principle of equal representation in all state and public institutions (6th amendment), the use of symbols and the right to the formation of institutions with educational objectives and scientific associations (8th amendment). The "Badinter double majority", as it was named, an instrument guaranteeing the veto power to the minorities, was prescribed for the adoption of those laws that directly tackle culture, use of languages, education, personal documents and use of symbols (10th amendment), while the two-third majority combined with the support of most of the deputies belonging to the non-Macedonian ethnic group is required for the legislation concerning the local self-government and territorial organization (16th amendment) and for the change of the constitution. Minorities were given the veto power in the procedure prescribed for the appointment of the members of the judiciary council and 3 out of 9 members of the constitutional court (amendments 14th and 15th), while the 12th amendment prescribed the establishment of the Committee for inter-ethnic relations, changing both its composition and role if compared to the Council established by the 1991 constitution.

Instead of the previous 12 ethnic representatives, plus the president of the council, the committee for the inter-ethnic relations was supposed to count 19 members, over-representing the two most numerous groups (the Macedonian and Albanian ethnic groups were given 7 members each, while Serbs, Bosniaks, Turks, Romas and Vlachs have one member each). The political composition of the committee is similar to that of the government, as the majority in the assembly appoints the members (according to the ethnic barometer 2006 report, the success of the committee to see its recommendations adopted in the assembly is a direct consequence of its political composition, rather than a sign of the importance given to the committee). Beside the consultative role (the opinions and the recommendations issued by the committee have to be discussed in the assembly, and the assembly has to bring a decision upon these documents), it was also given the role to decide whether the legislation is to be adopted by the Badinter majority or by the simple majority in the assembly.

The peace agreement also prescribed that, beside Macedonian as the official language of the state, "any other language spoken by at least 20 percent of the population is also an official language" (art 6.5. of OFA). The interpretation of this article remained dubious and conflictive, as the use of language was further regulated prescribing the necessary legislative changes, which allowed different interpretations of the principle (narrow vs. broad

interpretation). The Law on the Use of Languages was adopted only in July 2008 after a long and difficult process, and in a manner seriously questioning the democratic procedure of the rule adoption. The issue of the education in the minorities' language was also dealt with in OFA, where the agreement required that "state funding will be provided for university level education in languages spoken by at least 20 percent of the population of Macedonia" (art 6.2), while the principle of the positive discrimination will be applied in the enrolment in State universities of candidates belonging to communities not in the majority in the population of Macedonia, until the enrolment reflects equitably the composition of the population of Macedonia (art 6.3).

As the particular rights were to be attributed according to the percentage enjoyed by each community, the OFA also scheduled the national census, which was supposed to take place by the end of 2001. Maximizing their requirements for the equal representation in the state administration, the Albanian leaders were arguing that the Albanian ethnic group accounts for more than one third of the population, questioning the validity of the 1994 census. The OFA thus prescribed that a new census should be carried out in order to establish the demographic composition of the country which would further serve as a basis for a series of solutions concerning the local self-government and the use of languages.

Similarly, OFA tackled the question of the expression of identity, were the article 7.1. stated that "local authorities will be free to place on the front of local public buildings emblems marking the identity of the community in the majority of the municipality, respecting international rules and usages". The concrete interpretation of this provision also remained problematic in the process of implementation, where its politicization was used in order to exercise pressures over the Macedonian parties in bargaining over different policy issues.

Even though expressed in terms of guarantees to the ethnic minorities, OFA, as well as subsequently adopted legislation, actually favoured the Albanian ethnic minority, other minorities often being the subject to discrimination coming from the Macedonian majority as well as from the Albanian minority. The same Badinter rule, granting collectively the veto power to a number of different ethnic minorities acting as a single veto block, seen the ethnic composition of Macedonia, de-facto functioned as a veto power of the Albanian minority, protecting the interests of other ethnic groups only when they are overlapping with the interests of the ethnic Albanians[451]. Seen the particular distribution of power between the ethnic Albanian parties, it also allowed the politicization of the veto power where the

[451] See also Kelleher, 2005.

dominant party in the ethnic Albanian party system, DUI, was controlling the necessary votes[452]. The blockage of the Macedonian institutions in the period 2006-2008 was a direct consequence of this particular combination of the Badinter rule, party system characteristics and the social composition of the country. Furthermore, linking the use of language and symbols with the 20% threshold also significantly favoured the Albanian minority (counting about 25.17%), that in most of the cases is the only one profiting from these provisions[453]. The implementation of the principle of the equal representation is also much more difficult with the other ethnic groups. Finally, the Committee for the inter-ethnic relations also made the rights of the other ethnic minority a matter of balance between the Macedonians and Albanians. As Balalovska (2006) stressed: "The role of this Committee is somewhat negligible in the practice… [A*ccording to the statements of its*] other members, the Committee is taken somewhat lightly. It was, for instance, set up late, one year after all other parliamentary commissions. In addition, according to a representative of the smaller ethnic communities, although it was agreed that the Presidency of the Committee would be based on a yearly rotation and include MPs from all ethnic communities, this still did not happen. Finally, members felt that important issues, such as the use of community languages and symbols, were not given a prominent place on its agenda" (Balalovska, 2006, p.22).

After the signature of OFA and constitutional changes introduced, the implementation of the framework agreement slowly started[454]. The delay in the constitutional amendments also brought to a one-year delay of the census. The international experts were engaged for the training of the poolers and actively took part to organizing the census. The results, published after further delay in December 2003, brought to the malcontent of all political actors. Macedonian experts were claiming that the Albanians are far under the 25% established by the census, arguing that the increase from 441.104 members of the community in 1994 to 509.083 after only eight years is impossible considering the natural population growth of 8,5 per mils, while the Albanian experts, counting all the Albanians present in Macedonia regardless their citizenship, were claiming such figure was 28%[455]. However, the international actor's

[452] Made of the NLA fighters, since the 2002 parliamentary elections, this party controls about 60/70% of the Albanian votes.

[453] On the OFA and (lack of) respect of (some) minorities' rights, see Novakova, 2007.

[454] For the mechanisms of the protection of minority rights and power-sharing mechanisms introduced in different policy areas, please see other sections, particularly the ones on decentralization, administrative reform, police reform, judiciary. The problems deriving from the power-sharing mechanisms introduced and the bargaining process along ethnic and partisan lines is also described in those chapters. On the questions concerning the definition of the Macedonian state, and the conflict over the definition of the state (civic, national, bi-national), see the chapter on the constitution.

[455] See Gaber-Damjanovska and Jovevska, 2003.

involvement in the process represented a guarantee that ensured that both ethnic groups finally accepted the results and proceeded with the implementation of OFA according to the results of the census (as we could see, the decentralization and the equal representation in the administration were the two areas in which the census results had the most important implications).

The other significant changes introduced after the OFA (beside those we already discussed in other sections) included the Law on Citizenship, the use of symbols, the Law on the Committee for the inter-ethnic Relations and the Use of Language. At the same time, some of these issues were also among the most difficult ones, and the maximizing of the requirements concerning the use of language was often a source of obstacles for reforms in other spheres.

In February 2004, the amendments on the Law on Citizenship were introduced. The changes allowed all state-less people and their children born and living in Macedonia to be granted the citizenship, reducing the time necessary for the foreign citizens to be naturalized from 15 to 8 years, 6 for the refugees (thus allowing numerous refugees from Kosovo during 1998 and particularly 1999 to be granted citizenship in 2004/2005), and made citizenship more easily available for the Diaspora members of Macedonian origins, allowing them to keep the double citizenship. The changes in the requirements for the citizenship, judged to be too restrictive, were prepared already in 1999 in order to meet the standards prescribed in the "European citizenship convention". Seen the impact the legislation was feared to produce on the ethnic composition of the country, the law adoption was delayed until the ratification of the European Convention of Citizenship in 2002 opened a new window of opportunity for the law to be finally changed.

In 2005, the Law on the Use of the Symbols of Ethnic Communities was adopted. Rather than changing, the legislation appeared to be partially overlapping with the Law on the Use of the Symbols Expressing the Ethnic Identity of the Members of the Minorities adopted in July 1997. Thus, the formulation in the two laws was slightly different, one regulating the use of the symbols of *communities*, the other regulating the use of symbols expressing the identity of *communities' members*. Further on, the law adopted in 2005 did not, as it is usually the case, prescribe the annulment of the 1997 legislation or its parts. In line with OFA and, as the case was with many other solutions, the law, adopted due to the strong pressure of the Albanian minority, favoured this minority as it prescribed a larger use of the ethnic community symbols in those cases where this community is the *majority* in the ethnic municipality. The law allowed

the ethnic minority's symbols to be permanently exposed together with the state ones in the buildings of the local self-government, in the municipalities where the ethnic groups is in majority, and allowed the same symbols to be exposed also on the state institutions as well in particular occasions prescribed by the law (festivities, manifestations etc). The adoption of the law was a particularly troubled process, the discussion of the Albanian deputies being mainly concentrated on the census (shall a census of 50% or 20% be the threshold for allowing the use of symbols?), while a stronger opposition was coming from the Macedonian deputies, who were requiring that the change of the flag used by the Albanian community, as it is identical to the national flag of the Albanian state, arguing that the official usage of a symbol identical to that of another sovereign state would bring confusion about the status and sovereignty of the Republic of Macedonia. These requirements were not satisfied and the law was adopted with 50 favourable votes[456].

Even though the amendments proposed by the Macedonian deputies were refused, a vast use of ethnic symbols prescribed and the support of the major Albanian party for the law ensured, the respect for the provision was seriously hampered in the municipalities with Albanian majority, independently on the colours of the municipal government, where the symbols of the Albanian community (identical to those of the Albanian state) were exposed in unlawful manner, without respecting the provision requiring the simultaneous usage of state symbols.

Two years later, the decision of the constitutional court from the 24th October 2007 declared some key provisions of this law unconstitutional, causing the great rebellion in the Albanian public opinion. Claiming that, according to its constitution, Macedonia is a state based on civic and not ethnic principles, that all citizens and all ethnic communities are equal before the law and that the ethnic communities are free to use their symbols, the court declared as unconstitutional the limitation that the law introduced on the use of the ethnic community symbols only to those municipalities where the ethnic community represents the majority. On the other hand, the permission to use the ethnic community symbols together with the state symbols during the state festivities, was also declared unconstitutional. Interpreting the difference between the symbols of the community and the symbols expressing the identity of the community members, the court claimed that the use of symbols of the ethnic communities are the expression of the stathood. Being Macedonia a unitary, and

[456] http://star.utrinski.com.mk/?pBroj=1829&stID=39804&pR=2, http://star.utrinski.com.mk/?pBroj=1397&stID=7749&pR=2.

not be-national state, the provisions of the 2005 law allowing the use of ethnic communities' symbols together with the Macedonian state's were declared unconstitutional.

The decision of the constitutional court caused an earthquake in the lines of the Albanian parties. With already aggravated inter-ethnic relations, due to the ongoing conflict between DUI and VMRO and security issues in Tanuševci, the decision of the constitutional court only worsened the tensions, parties accusing the constitutional court to be politicized, while DUI again threatened that shall the Albanian rights not be respected, the events of 2001 might repeat[457]. The Albanian members of the constitutional court resigned, the publication of the decision was blocked by the official gazette, the SDSM and ruling VMRO accused each other of politicization of the constitutional court[458]. On the insistence of DUI, the use of symbols was included in the agreement between VMRO and DUI, signed in 2007, and were part of the DUIs conditions for forming the governmental coalition with VMRO in summer 2008.

The Law on the Committee for the Inter-ethnic Relations was adopted in 2007, again as part of the agreement between DUI and VMRO signed in may 2007. The failure of VMRO to form the ruling coalition with DUI after 2006 made an enraged DUI decide to boycott the assembly and obstruct its functioning. The key point in DUI's tactic of obstructing the new government's work was the use of the Badinter rule (see Jovevska and Gaber-Damjanovska, 2006) and so the committee for the inter-ethnic relations, having the decisive vote in deciding whether the Badinter shall be used or not, came to DUI's attention[459]. After the decision of the committee that the Law on Police does not require the double majority, DUI initiated strong pressures against the committee, as the Albanian parties were doubting the ethnic background of one of the Committee members. The malcontent grew even stronger when the Broadcasting law was passed in the Committee for inter-ethnic relations without respecting the double majority rule.

The boycott of the assembly by the strongest Albanian party rose a series of problems in the period the country was hoping for the EU candidate status and NATO membership. In February, the committee was dismissed, as a first step government made towards DUI, while in May 2007 a secret agreement was signed between DUI and VMRO (the content being kept away from public) in order to ensure that DUI re-enters the assembly. The Law on the Committee for Inter-Ethnic Relations was part of such agreement, and was adopted in

[457] http://www.utrinski.com.mk/?ItemID=CAB5702A2E4A4B47BAF411A851376DFE.
[458] http://www.utrinski.com.mk/?ItemID=A6D3D518D4641D40A442360E01070F0B, http://www.utrinski.com.mk/?ItemID=4B3452D65D8C174FB62D2F23049352E4.
[459] http://www.dnevnik.com.mk/?itemID=50D52838F431924881A560C7B8D173B8&arc=1.

December 2007. The law precised the procedure for appointing the members and prescribed the list (required by DUI) of the 46 laws to be adopted by the Badinter majority.

The use of language and the Law on the Use of Language also were hot issues hampering the reforms in many other areas of policy as well. Seen the imprecision concerning the use of language included in the OFA, two interpretations emerged: the thin one, advocated by the Macedonians, that would strictly respect the provisions in OFA, creating high respect for the human rights, avoiding any discrimination based on language, but maintaining the status of the official language to Macedonian; and the somewhat thicker interpretation of the Albanian parties, requiring the status of official language for the Albanian and the introduction of bilingualism. The requirements to include the Albanian as the official language in the police and army were used by DUI to maximize their negotiating position in the police and security sector reform (see the relevant sections).

The question of the use of the Albanian language was tackled by much legislation introduced after the OFA, that regulated the possibilities of the use of minorities' language in particular areas and institutions. The use of the Albanian language was prescribed to be used in communications with the central administration and with the local administration in municipalities with Albanian community making up to 20% of the population; in the assembly; in the personal documents that are bilingual. Other languages should be used at a municipal level if so decided by the municipalities. The Broadcasting Law imposed an obligation to public national broadcasters to broadcast programmes in the languages of all communities, while the Macedonian Radio and Television switched its third channel to sort of an "ethnic communities"' channel. The universities, both private and state-funded, were organized in Albanian language. However, the requests for widening the use of the minority language were continuously on the agenda of the Albanian political parties as an important bargaining card in the decision-making process.

The Law on the Use of Languages was voted in July 2008, in a marathon procedure and without any public discussion as part of the coalitional agreement for a government formation between DUI and VMRO (some deputies of the ruling coalition admitted that they were surprised when the law came for voting, they had not even heard that the law was being prepared and did not have the opportunity to get familiar with its content, see Utrinski, 28 July, 2008). The procedure through which the law was adopted rose the malcontent of the public opinion, as one of the most important and difficult pieces of legislation was introduced

"through the small door", as part of the coalition bargaining, without consulting the civil society or other minorities, in an assembly boycotted by the oppositional parties[460].

The solutions adopted prescribed the use of the law in the assembly, in communication between citizens and ministries, ombudsman, in the judicial and common law practices, during elections and referendums, in the identification documents, in the contact of the police with the citizens, and many other fields. The content mainly legalized the already existing framework, introducing some of the Albanian requests, but not the much longed for bilingualism, which was the main criticism from the oppositional Albanian parties.

14.2.2. International Actor's Role in the Promotion of the Minority Rights

Both EU and CoE played an active role in promoting the protection of the minority rights, where conditionality (concerning the implementation of OFA), strong support, mediation, technical and material assistance were offered. Being the position of the Albanian minority and inter-ethnic relations a key issue for the stability of the country, in order to assess the importance of the international actors in maintaining the inter-ethnic dialogue and stability, many dimensions shall be taken into consideration, as well as the efforts in the fields of police reform, security sector reform, decentralization, administrative reform and judiciary. The membership in the CoE and ratification of the different conventions opened the opportunity for the introduction of the mechanisms for the protection of minority rights as envisaged in the Framework Convention for the Protection of the National Minorities, European Charter of Local Self-Government, European Convention on Human Rights, European Charter for Regional or Minority Languages. After the 2001 conflict, EU and NATO undertook an important role in promoting the implantation of the OFA. The EU priorities concerning directly the minority rights are therefore rather few, mainly concentrating on better implementation of the existing instruments towards the minor ethnic groups (Serbs, Vlachs, Romas, Turks, Bosniaks), far less successful than the Albanian minority in protecting their rights (for the EU priorities and assistance, please see the Tabb.1 and 2).

14.2.3. Assessment

Due to the strong presence of the Albanian ethnic group, the guarantees for minority rights were introduced already in the 1991 constitution. Thanks to the strength of the Albanian minority, these rights and their interpretation were continuously pushed forward and their

[460] See Utrinski from 28 and 29 July 2008 for the reactions on the law.

gradual increase can be noticed already in the Nineties. After 2001, this process was even more accelerated, where the threat/fear for further violence maximized the requirements of the Albanian political parties (combined with the Macedonian fear for the federalization or creation of the bi-national state, perceived as a loss of statehood) and the efficiently exercised veto power contributed to increase the powers granted to the national minority(-ies). In such asset, the incentive for the rule adoption was primarily domestic (especially seen that the levels of autonomy and right enjoyed by the Albanian minority in Macedonia are far above many European countries), where the international actors served as mediators and guarantors of the credibility of the commitments made between domestic actors. In the latest period we can also register a rather particular, involuntary influence of the EU and NATO on the process. The desire to make further steps towards the EU and NATO integrations increased the Macedonian parties vulnerability towards the Albanian requirements. Thus, by successfully using their veto power and obstructing/blocking the adoption of legislation considered crucial for the Macedonian integrations, Albanian parties and in particular DUI succeeded in further pushing ahead the rights enjoyed by the Albanian minority. An important lesson on the international influence over the domestic process can be drawn from here: the democracy promotion means pushing onto the domestic agenda a series of issues which in a more-or less already established form should be adopted. If the party which is most vulnerable to the EU leverage does not control all the veto-points for the rule adoption, it is forced to seek the support of other stakeholders. And this opens a window of opportunity for the requirements of the stakeholders. The international actor's influence over the domestic agenda is double: the norms promoted by the IA, but also the norms promoted by the stake-holders in exchange for their support. In such light, the Law on the Committee on the Inter-ethnic Relations and the much larger use of the Badinter rule prescribed, as well as the Law on the Use of the Languages can be perceived as a price paid by the Macedonian parties for passing the necessary legislations for its advancing in the EU/NATO integration process.

14.3. A Comparative Assessment

In the following paragraphs we described the development of the legislation aiming to protect the rights of the minorities in Serbia and Macedonia. As we could see, the two cases are rather different and open different questions. In the case of nowadays Serbia (as in this

work we are concentrating on Serbia without Kosovo), the national minorities are weaker (about 20% of the population, while the biggest minority is the Hungarian minority accounting for about 4% of the population and is not militant), while intolerance and tensions should be considered deriving from the process of the nation-state building, from the strong nationalism during the '90s, from unsolved territorial disputes and problems with Kosovo and from the wars to which Serbia took part during the Nineties. The unsolved problem of the borders and the Kosovo status (together with all the events that took place during the Nineties and the recent dissolution of the State Union of Serbia and Montenegro) are continuously nourishing nationalism which, on turn, harms the relationship between the Serbian majority and the existing national minorities. While rather threatening, as the intolerance of the majority group and the radical nationalism often brings to ethnically inspired cases of violence, the phenomenon at the same time appears controllable in the long run, as we might hope that once the territorial disputes are settled, there is space for peaceful co-existence of the ethnic groups. In her study of the minorities claims, Bunce argues that the lack of secessionist claims of the Hungarian minority in Serbia is explained by a lack of external support for such project[461] and by the dynamics of party competitions that induced the ethnic minority to moderate their requirements from secession to decentralization and to seek the support of the majority's parties promoting the decentralization. The future of the inter-ethnic relations in Serbia then strongly depends on the resolution of the problem of the Kosovo status and the approach the Serbian political elite would adopt towards Vojvodina, that after the unilateral secession of Kosovo is in a rather delicate position respect to the center[462]. Yet, as the period Serbia experienced immediately after the change of regime showed, the moderation of nationalism in Serbia is possible, inducing to more favorable and tolerant environment for the ethnic minorities and peaceful coexistence. The recent reshuffling of the Serbian party scene, and the breakdown of the nationalistic party SRS, whose more moderated block stepped out and formed a party of far more moderate aspirations, represent positive steps in the decline of the nationalistic logic in the country.

The problem in Macedonia is rather different: the presence of the strong militant ethnic group (about 23% of the Macedonian citizens declared to be from the Albanian ethnic group, see tables in Appendix) with a secessionist agenda brings to the situation where the question

[461] The lack of support for Hungarian nationalism from their homeland can be illustrated by the failure of the referendum held in Hungary on the double-citizenship that would allow acquisition of the Hungarian citizenship for the Hungarian minority in the neighbouring countries.

[462] See Bunce, 2006.

of the minority rights turns into political bargaining and struggle for power between two ethnic groups. Due to the institutionalization of the ethnicity, institutional legacies and the structure of opportunities in the country, both the national unity and the sustainability of the Macedonian state are brought into the question. It was and remains a key issue in understanding the entire process of democratization in Macedonia, and seen the structure of opportunities created by the existing system that institutionalized ethnicity (see Brieber, 2003) it continues, as we saw in other chapters, to create an impetus for using nationalistic rhetorics and for maximizing the requirements of the Albanian ethnic elite that is basing its power on the ethnic conflict. In such asset, while the ethnic minorities enjoys large political rights (Albanians being much more capable than others in enforcement and protection of the interests of the members of communities), the ethnic conflict between the majority and militant, strong ethnic minority seeking the creation of a bi-national state and threatening the secession still persist in time.

Consequentially, the international actor's approach to the two countries was radically different. While in Serbia we register the promotion of the minorities' rights with the usual mechanisms and contents that the promotion of the minority rights had in other countries as well (CoE playing the most prominent role in the process), in the case of Macedonia the international community played the role of mediator between the two sides in conflict, concentrating on the commitments negotiated between partners. The results are obviously impossible to compare, as in one case we have a legislative framework in line with the minimum international standards, whose proper implementation is hampered by the overall lack of tolerance and presence of nationalistic logics of the majority group, while in the other the minorities' rights are maximized and there is a relatively good implementation of the existing provisions, combined with the threat of maximization of militant minority's requirements, continuous destabilization of the national consensus and threat of the inter-ethnic conflict.

Appendix

Table 1: “Ethnic composition of Macedonia”.

Macedonians	1,297,981	64.18
Albanians	509,083	25.17
Turks	77,959	3.85
Roma people	53,879	2.66
Serbs	35,939	1.78
Vlachs	9,695	0.48
others	38,011	1.88
TOTAL	2,022,547	100

Source: “State Statistical Office of the Republic of Macedonia”author's elaboration.

Table 2: “Ethnic composition of Serbia”.

Serbs	6,212,000	82.86%
Hungarians	293,172	3.91%
Bosniaks	136,464	1.82%
Roma	107,971	1.44%
Yugoslavs	80,978	1.08%
Croats	70,602	0.94%
Slovaks	57,900	0.89%
Others	474,323	6.33%
TOTAL	7,498,001	100

Source: "Statistical office of the Republic of Serbia", author's elaboration.

Table 3: "EU priorities and the protection of minority rights in Serbia".

2002	Legislation on minority rights, including relevant changes to criminal and other codes in line with the CoE FCPNM should be urgently adopted and implemented.
2003	Clarity on the constitutional distribution of competencies, particularly on minorities. Implementation of the new constitutional arrangements in such a way as to provide for the full respect and protection of minority rights through the country, in line with the council of Europe framework convention for the protection of national minorities.
2004	**Short-term priorities:** Ensure adequate cooperation between the State Union and Republics as concerns the legislative basis and practical protection of the rights of refugees, displaced persons and minorities. Strengthen cooperation with Bosnia and Herzegovina and Croatia to enable returns. Engage in dialogue with Priština on the return of displaced persons and related issues such as property and social rights. In both Republics: amend legislation to repeal all discriminatory provisions.
2006	**Short-term priorities:** Ensure adequate cooperation between the State Union and Republics and where appropriate the provincial and local level as concerns the legislative basis for and practical protection of the rights of minorities. Implement the strategies and action plans relevant to the integration of Roma people, including returnees. Strengthen the functioning of minority national councils. Promote good inter – ethnic relations, in particular by taking adequate measures in the field of education. Promote participation of minorities in the judiciary and la enforcement bodies.
2007	**Short-term priorities:** Ensure that constitutional provisions on minority rights and protection of minorities are observed and fully implement the strategies and action plans relevant to integration of Roma, including returnees. Continue efforts to promote good inter – ethnic relations, including measures in the field of education, strengthen the functioning of minority national councils, including adoption of pending legislation, promote participation by minorities in the judiciary and law enforcement bodies and continue awareness raising activities, including use of minority languages Adopt new legislation on refugees and continue to implement the national strategy on refugees.
2008	**Short-term priorities:** Ensure that constitutional provisions on minority rights and protection of minorities are observed and fully implement the strategies and action plans relevant to integration of Roma, including returnees. Continue efforts to promote good inter – ethnic relations, including measures in the field of education, strengthen the functioning of minority national councils, including adoption of pending legislation, promote participation by minorities in the judiciary and law enforcement bodies and continue awareness raising activities, including use of minority languages Adopt new legislation on refugees and continue to implement the national strategy on refugees.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia, author's elaboration.

Table 4: “EU Support to Serbia minority rights”.

Year	EC funds	Programs	
2005	1 million	Targeted assistance to Roma in Serbia.	
2006	2 millions	Support for the Roma Community adjacent to the Gazella Bridge.	Within the framework of the Belgrade Poverty Action Plan an implementation agreement will be signed between EAR and the City of Belgrade detailing actions and responsibilities to address needs of the Roma Community.
2007	1.5 millions	Implementation of priorities in the area of human rights and protection of national minority groups.	In order to implement project it is necessary that Agency for Human and Minority Rights assure adequate resources and structures to perform activities so as to be able to absorb the assistance, and meet its responsibilities as the main focal point for this project. - Cooperation with central and municipal authorities should be fostered. - Involvement of relevant governmental institutions, key actors and stakeholders in transparent consultation processes is necessary. - Organization, selection and (gender balanced) appointment of members of working groups, training sessions, seminars and study visits by the beneficiaries as per project workplan.

Source: European Agency for Reconstruction, 2006 annual report; IPE documentation for 2007 author's elaboration.

Table 5: "EU priorities and the protection of minority rights in Macedonia".

2002	Implement the Framework Agreement of 13 August 2001, respecting its timetable for adoption of legislation, carry out the Census of population.
2003	Continue to accelerate the implementation of the Framework Agreement of 13 August 2001. The full implementation of the FA remains a key step on the country's path towards closer relations with the EU and requires sustained commitment from all communities and political stakeholders. Ensure that next steps in the processing of census data are carried out, with the support of the international monitoring mission, in line with international standards.
2004	**Short-term priorities:** Implement the legislation already adopted to implement the Framework Agreement (FA). Adopt remaining legislation required by the FA. Adopt a medium term strategic plan for equitable representation of minorities, including adequate budgetary means, and ensure speedy implementation. Take further measures to ensure the implementation of the FA provisions on the use of language and on community symbols. Ensure that the process of establishing a third State university in Tetovo is completed in a way that creates synergy with the South East European University and provides for academic standards in line with the Bologna declaration.
2006	**Short-term priorities:** Ensure the effective implementation of the legislative framework adopted in accordance with the Ohrid Framework Agreement, with a view, inter alia, to promoting inter-ethnic confidence-building. Adopt and begin to implement a medium-term strategic plan for equitable representation of minorities in the public administration (including in the judiciary) and public enterprises. Promote respect for and protection of minorities in accordance with the European Convention on Human Rights and the principles laid out in the Council of Europe's Framework Convention for the Protection of National Minorities, in line with best practice in EU Member States. Further promote access to education for all ethnic communities.
2007	**Short-term priorities:** Sustain implementation of the Ohrid Framework Agreement with a view, *inter alia*, to promoting inter-ethnic confidence building. Fully comply with the European Convention on Human Rights, the recommendations made by the Committee for the Prevention of Torture as well as the Framework Convention for the Protection of National Minorities. Upgrade and implement the strategy on equitable representation of non-majority communities, notably by providing adequate resources and imposing effective sanctions for failure to meet targets. Promote access to education, justice and social welfare for members of minority groups.
2008	**Short-term priorities:** Sustain implementation of the Ohrid Framework Agreement with a view, *inter alia*, to promoting inter-ethnic confidence building. Fully comply with the European Convention on Human Rights, the recommendations made by the Committee for the Prevention of Torture as well as the Framework Convention for the Protection of National Minorities. Upgrade and implement the strategy on equitable representation of non-majority communities, notably by providing adequate resources and imposing effective sanctions for failure to meet targets. Promote access to education, justice and social welfare for members of minority groups.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia, author's elaboration.

Table 6: "EU Support to Macedonia minority rights".

Year	EC funds	Programs	
2002	3.9 million	Promotion of inter-ethnic relations, Equitable representation of minorities in the civil service; South East Europe University Books Translation and Printing; Reconstruction of Leshok church and Neprosteno mosque.	Full respect of ethnic and minority rights in accordance with the dispositions of the Framework Agreement and adoption of the Constitutional amendments and legislative modifications set out in annexes A and B of the Framework Agreement.
2003	2 million	Promotion of inter-ethnic relations.	
2004	4.9 million	Support to the Sector for the implementation of the Ohrid Framework agreement; Training of minority groups for civil servants; Support to minority community activities; Extension of the South East Europe University Campus.	
2005	2 million	Assistance to the sector for the implementation of the Ohrid Framework agreement and training of minority civil servants.	The key conditionality for the project is Government's commitment of resources to the implementation of the Ohrid Framework Agreement. It is also crucial that the Government secures adequate budget resources for this purpose and personnel allocated.

European Agency for Reconstruction, 2006 annual report; IPE documentation for 2007, author's elaboration.

Table 7: "Development of the legislative framework for the protection of ethnic minorities in Macedonia, external factors" (author's elaboration).

Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	Yes (this practically means the implementation of OFA, a necessary condition for Macedonia).
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	X
Was the issue part of the EU ***key*** short-term priorities?	No.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	Yes.
Amount of the EU financial support to the reform in general:	12, 8
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	5.1%
Reform perceived by the IA as:	Necessary step in the peace building.
The main concern guiding IA's intervention in the field:	Security.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	Partially (it tolerated the solutions putting a side the other minorities).
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes
Were the recommendations made by the IA accepted?	X
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	X
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	No (key issue was Albanian-Macedonian relationships).

Table 8: "Development of the legislative framework for the protection of ethnic minorities in Serbia, external factors"(author's elaboration).

Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	Yes (membership in CoE).
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	Yes.
Was the issue part of the EU ***key*** short-term priorities?	No.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.
Amount of the EU financial support to the reform in general:	3 millions
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	0,27%
Reform perceived by the IA as:	Necessary for the peace and democratization.
The main concern guiding IA's intervention in the field:	Security and democratization.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.
Were the recommendations made by the IA accepted?	Mainly.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	X
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	No.

Table 9: "Development of the legislative framework for the protection of ethnic minorities in Macedonia, domestic factors".

Domestic input for the change:	Present, strong.
Domestic actors pushing for the reform:	Present and strong (Albanian minority).
Level of conflictuality of the issue:	High.
Type of the conflict and main line of the conflict:	Inter-ethnic.
Did the issue concern the deep divisions in society?	Yes.
Type of the issue (salience - positional):	X
The main beneficiaries of the status quo:	Macedonian ethnic majority.
The main beneficiaries of the change:	Albanian ethnic minority.
Is the existing status quo strongly delegitimized by all relevant actors?	No.
Two or more alternative solutions present?	X
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.

Table 10: "Development of the legislative framework for the protection of ethnic minorities in Serbia, domestic factors" (author's elaboration).

Domestic input for the change:	X
Domestic actors pushing for the reform:	Present yet weak (minorities).
Level of conflictuality of the issue:	Mid.
Type of the conflict and main line of the conflict:	Inter-ethnic.
Did the issue concern the deep divisions in society?	No.
Type of the issue (salience - positional):	X
The main beneficiaries of the status quo:	Serbian ethnic majority.
The main beneficiaries of the change:	Ethnic minorities.
Is the existing status quo strongly delegitimized by all relevant actors?	No.
Two or more alternative solutions present?	X
Political fluidity/stability (in terms of the perspective of power of the central actors)	Stable/fluid.

Table 11: "Development of the legislative framework for the protection of ethnic minorities in Macedonia, outcomes"(author's elaboration).

The procedure of law drafting:	Behind the closed doors, non-transparent, inter-ethnic, intra-party bargaining.
The main deficiency in the adopted legislation:	The lack of full protection of the minorities other than Albanian.
The main beneficiaries of such deficiencies:	Albanian ethnic minority.
The status (2008):	Rule adopted, rules mainly implemented, weaknesses in protection of the minorities other than Albanian.

Table 12: "Development of the legislative framework for the protection of ethnic minorities in Serbia, outcomes"(author's elaboration).

The procedure of law drafting:	Open, inclusion of the relevant actors.
The main deficiency in the adopted legislation:	The lack of implementation, persistence of the intolerance.
The main beneficiaries of such deficiencies:	X
The status (2008):	Rule adopted, slow implementation.

15. REFORM OF THE MILITARY

"Those who have the command of the arms in a country are masters of the state, and have it in their power to make what revolutions they please"
Aristotele.

Starting from Weber's definition of the state that includes the monopoly on the legitimate use of violence[463], the security forces (police, military, intelligence service and similar) and the control over these forces become central for understanding the functioning of the state.

How the monopoly over the use of violence is exercised, becomes the crucial determinant of the type of government (authoritarian or democratic) we are facing. As Vankovska and Wiberg underlined, even though often omitted from the studies on democracy and not included into the definition of democracy, if we accept the existence of the link between the state and the monopoly of violence, then two other criteria, concerning the civil-military relations, should be added for a state to be considered democracy: "The monopoly must also be effective, at least for any level of force beyond the level of ordinary crime; and the way in which the state uses force of internal or external coercion is subject to the public democratic scrutiny and control" (Vankovska and Wiberg, 2003, p. 4).

The importance of these criteria, and particularly the importance of the democratic scrutiny and control over the use of force, was proved by many transitional studies (especially those concentrated on Latin America) that offered the evidence on how the security sector can become one of the crucial obstacles to democratization, as the existence of the armed troupes, if left out of control, represents a continuous threat for the newly established democratic regime. Very often the non-democratic regimes are based on a coalition that includes the security forces (military or police) as part of the narrow authoritarian elite (Linz makes the classification of the authoritarian regimes where one of the important classificatory criteria includes the role of the security sector), which then models the entire process of transition to democracy that must face the difficult process of the depoliticization of the security sector.

[463] See Weber, 1919.

Huntington also identifies the politicization of the military and their involvement in political life as main source of threat for the democratization process, putting a strong accent on the professionalization of the military and the separation of military and political actors as a key for maintaining the civilian control over the armed forces[464]. The strong criticisms advanced against Huntington's thesis did not undermine its importance, testified by the professionalization of the army and its depoliticization as one of the issues usually included in the security-sector reforms during the democratization process.

Another important dimension that should be taken into account when analyzing the civilian-military relationships concerns the concept of national security and threat. According to Vankovska (2003), "One of the main dangers for a democracy on a national level comes from the military that has no precisely and legally defined mission, or when the political order is collapsing and the military believes that it is its main mission to preserve the state order" (Vankovska, 2003, p. 319). In this light, the unsolved territorial disputes, the unclear definition of the state or the lack of consensus on the concept of "threat" all represent very serious obstacles in offering a precise definition of (and thus limitating) the military's engagements, prerogatives and powers. As we will see, in both Serbia and Macedonia the concept of national security met a series of problems. In Macedonia, the lack of national consensus and the inter-ethnic conflict obstructed the definition of the role of the military (what is threatening the nation?), while in Serbia the unsolved statehood problems, together with the territorial deputies and secessionism in Kosovo, obstructed the legitimacy of the army and hampered the clear definition of its usage on the territory (threat to what nation?).

In the following section we will examine the process of the military reform, in order to understand the role the military had in the process of transition and democratization in the two studied countries and in order to understand the relationship between the civilians and the military. We will pay particular attention to the relationships between the president, the ministry of defense, chief of staff and the parliament, examining the (lack of) process of establishment of the democratic control over the security forces. As Vankovska stressed, the parliamentarian oversight of the security sector is the basic mechanism of citizen's control

[464] According to Huntington the civilian control over the military is characterized by: 1) a high level of military professionalism and recognition by military officers of the limits of their professional competences; 2) the effective subordination of the military to the civilian political leaders who make the basic decisions on foreign and military policy; 3) the recognition and acceptance by the leadership of an area of professional competence and autonomy for the military; and 4) as a result, the minimization of military intervention in politics and of political intervention in the military. (Huntington 1996: 3, in Vankovska and Wiberg, 2003, p. 19).

over the monopoly of violence, as it gives effective means for controlling the military and security forces to elected politicians, accountable to the citizens via the parliament (see Vankovska, 2003, p. 317). The powers of the parliament are at the centre of this problem: only normative (legislative) function or control as well? Does the parliament have some role in the process of appointing the chiefs of different security agencies? Who decides the military budget and who controls and monitors the military spending? Who defines what the national security, national interest, and national threat are? Who decides on the role of the army and its usage? To whom does the president or executive answer for the decisions made concerning the army, defense, security?

As we will see, the two countries followed completely different developments, facing different problems and arriving to different results. Macedonia established the basic principles of the civilian control already at the beginning of the '90s, the inter-ethnic tensions and ethnic-military, rather than civilian-military, relations being the most salient issue, while in Serbia the complicated institutional design combined with sharp political conflict and the problems deriving from the unsolved statehood represented the main obstacle that delayed the reforms and improvements in the issue until the recent constitutional reform.

15.1. Serbia: An Army without a State

15.1.1. Developments

As we will see, a series of factors obstructed the reform of the military in Serbia, delaying the establishment of the full civilian control over the army until 2008. The complex institutional design (the military sector was a competency of the State Union of Serbia and Montenegro), the political conflict between the republics and in Serbia between the political actors and the unsolved issues concerning the state building were the main causes of such delay. As Zveržhanovski argues, one of the most important obstacles in the establishment of the civilian control over the army is the level of stathood and the lack of legitimacy. According to the author, clear stathood is the precondition for the democratic civilian control of the armed forces and it is the lack of clear statehood that in the case of Serbia and Montenegro hampered the reform of the military:

> "… The new authorities face the challenge of dealing with a legacy of lack of legitimacy of both state and the military, a key obstacle in achieving any meaningful transition. The regime of Slobodan Milošević has left a legacy where by the only element covering the federation as a whole

> was an armed force predominantly oriented to one of the constituent elements in the federation (Serbia) and with a history of implication in political process. As democratic forces wrestled power out of Milošević and his cronies, the FRY did not represent an agreed political community. Resolving this issue would be a conditio sine qua non of transformation of civil-military relations, albeit one that would prove elusive for Belgrade's new masters" (Zveržhanovski , 2003, p. 9)

In the moment the democratic forces took the power away from Milošević, FRY did not represent an agreed political community. Serbia gained independence only in May 2006, being, before, part of the state of Federal Republic of Yugoslavia, transformed in the State Union of Serbia and Montenegro in 2003. Both according to the constitution of the FR of Yugoslavia and Constitutional Charter of the State Union of Serbia and Montenegro, the military was a competency of the federal level, its reform requiring not only a political consensus in Serbia, but also an agreement between the two republics. Further on, both the FR of Yugoslavia and the State Union suffered from a serious lack of legitimacy, challenged by the Montenegrin requirements for independence. The lack of interest from one of the two republics to strengthen the central institution resulted in the blockage of the decision-making on the federal (later State Union) level, making the reform of the military difficult to pursue.

While the lack of clear statehood hampered the army's legitimacy and the institutional blockage made changes difficult to undertake, the political conflict between Serbian leaders and the army's legacy with the past contributed to the complete blockage of the changes in the sector.

The heritage of the army was strictly linked with its role in the communistic and, later, Milošević's regime. The army Milošević inherited at the beginning of the Nineties was a strong army representing the SFR of Yugoslavia, a political actor whose legitimacy came from its role in establishing the communism and fighting against the fascism. The JNA (Yugoslav People Army) was involved in the political life of the communist Yugoslavia, represented on the federal level where it was given the same decisional powers as the six Yugoslav republics[465]. As the army was in a large share composed of Serbian leadership, and as in the process of the dissolution of Yugoslavia the army's interests (maintenance of the SFRY and its centralization) largely converged with those of Milošević, it was easy for Milošević to transform JNA into VJ, army of the newly formed Federal Republic of Yugoslavia. However, due to the political legitimacy and influence the army enjoyed in the communistic regime, Milošević never fully trusted the military forces, seeking to significantly diminish its political strength and choosing

[465] See Pietz, 2005.

to create, reinforce and base its regime on other security agencies (police, secret police and intelligence). This produced an anomalous security system in the FRY at the end:

> "Officially one army, but with three distinct territories (Serbia, Kosovo, Montenegro), connected to which is a complex of other forces: two ministries of interior and two law enforcement forces with their special units, semi-autonomous paramilitary units controlled by the Security Service, insurgent force with its off shot (UCK in Kosovo) and latter on the international presence in the form of KFOR all contributed to the unique complexity of the FRY security sector." (Zveržhanovski , 2003, p. 9).

The FRY constitution gave the crucial role in the defense policy to the Supreme Defense Council, composed of the three Presidents (President of Serbia, President of Montenegro, President of FRY), the Minister of Defense and the Chief of Staff, the latter two not having a vote. As Milošević was controlling at least two of three presidential posts[466], he enjoyed the control over the security and defense policies. In 1992 he withdrew the General Staff from the Ministry of Defense, putting it under the direct control of the Supreme Defense Council and president of Yugoslavia. He also incorporated the Military counter-intelligence into the General staff, strengthening his influence over the entire sector. The structure put in place, by-passing the Ministry of Defense, allowed direct strong influence of the Commander in Chief who, after the decline of Milošević's power, put the army under the control of its new Commander, Koštunica[467].

Beside the institutional design strengthening the federal president's control over the military, two other factors induced the army to grant their loyalty to Koštunica. The first is the Serbian traditional attachment to "the leader" that usually made the army "the president's army"[468], but even more important in this process was Koštunica's soft, continuity-based approach to the transition. Involved in the Balkan ethnic violence, the army feared the cooperation with the ICTY[469] and lustration, so that the military leadership recognized in Koštunica a political force that could offer them protection[470]. The composition of the

[466] Due to his influence in Montenegro, the control over his party and distribution of forces in the federal assembly who appointed the president of FRY, Milošević succeeded to control the positions of the president of FRY and Serbia, and until 1996 he also exercised strong influence over the president of Montenegro.

[467] In 2000 the change of the federal constitution prescribed that the president of the Federation, according to the old design appointed by the federal assembly, was supposed to be directly elected. In the presidential elections held in September 2000, Milošević lost against the united opposition's candidate Koštunica. After a few days' protest during which he was seeking to annul Koštunica's victory, he was forced to accept the victory of Koštunica, marking the end of his regime.

[468] We thus recall the notions of "King Petar's army", "Tito's army", "Milošević's army".

[469] On the war-crime legacy and the security reform in Serbia see also Gow, 2005.

[470] The bias between DS and DSS on the issues concerning the military reform was registered on the level of the supporters of these political parties as well, in the study of Atanasović (2006) on the political parties in Serbia and their approach to the security sector reform. The electorate of the DSS clearly shows a tendency to share the higher level of trust in the military, and decline in the support for the reforms. Compared with the other parties,

Supreme Defense Council (where Milošević's loyal crony Milutinović held place as a President of Serbia) ensured that Koštunica's continuity-based approach will prevail and allowed him full control over the military forces.

What followed after the regime change was, contrary to what was needed, the lack of reform in the first years of transition[471]. The reform was hampered by the permanence of the ancient regime forces in military and by the political conflict between Koštunica and Đinđić over the continuity-discontinuity approach to the transition process. The military sector soon became Koštunica's powerful instrument in the struggle for power within the new democratic elite. Challenging the will of other DOS parties and requirements coming from the NATO, he decided to keep Milošević's friend Pavković, compromised by allegations of war crimes, as Chief of General Staff[472]. This decision was justified on the grounds of preserving stability, but it was clear that a deal had been struck that would allow Pavković to stay and would preserve many of VJ's privileges in exchange for support to the democratic changes[473]. As the relationship between Koštunica and Đinđić became more tense, and the conflict over continuity vs. discontinuity became sharper and sharper, the security sector started to be used to the struggle between the two political forces. Koštunica's decision to maintain the old cadres on key positions raised a series of objections from DOS and the international community, but served Koštunica's struggle against Đinđić. Beside Pavković, Koštunica decided to keep in power also Aco Tomić, chief of the military secret service, another Milošević's faithful general accused of war crimes. The ancient regime supporters shifted their support to Koštunica, putting the entire military sector and military intelligence service in his hands. Some of the biggest security scandals that took place in 2001-2002 were all the product of one man's private usage of the security sector. The arrestment of the Serbian Deputy Prime Minister by the military secret service, as well as the protest of the Unit for Special Operations (JSO, see further) were all organized by general Tomić on behalf of Koštunica.

The arrestment of the Serbian Deputy Prime Minister by the military secret service pushed DOS to urge for the reform of the military sector in an effort to diminish Koštunica's influence. The law withdrawing the military counter-intelligence agency from the General Staff and putting it back under the Minister of Defense was urgently drafted and passed in the

they are positioned in the center of the political spectrum, between the parties of the former regime and the DS. See Atanasović, 2006. See also Popović, 2006.

[471] On the heritage hampering the military system reform and the obstacles delaying the reform, see Dallara, 2008.

[472] See Pietz, 2005, Zveržhanovski , 2003, Caparini, 2004.

[473] See Zveržhanovski , 2003, p. 10.

federal assembly. Finally, the formation of the State Union of Serbia and Montenegro put an end to this "war" between the federal and republican authorities, as the signature of the Constitutional Charter brought Koštunica's presidential mandate to the end.

While praised for many of its provisions, the constitutional charter of Serbia and Montenegro failed to bring the military under the civilian control and the part on civil-military relationship represented the most criticized part of this document. The solution adopted was, if not equally, then even more problematic than the previous: again, the democratic control was not established as the parliament had no constitutional powers over the military. Such control was given to the Supreme Defense council, similar in its composition to the council established by Milošević (three presidents), but this time with even less democratic legitimacy as the president of the State Union was not directly elected, but appointed by the state union's assembly, on its turn appointed by the two republics' assemblies. From the functional point of view, the solution made the use of military impossible if there was no consensus of the three presidents, a situation judged by the experts to be potentially dangerous in case of a war conflict. The legitimacy of the council was further hampered due to the fact that until the election of Tadić in summer 2004, the council was composed by one nominated president, one acting president, and only one directly elected member (Vujanović, the president of Montenegro).

The reform of the military started in 2002 with the adoption of the Law on Secret Service and continued only in 2003, when the long awaited for amendments to the Law on the Army were adopted, reducing the compulsory military service and introducing the principle of conscientious objection[474]. The reform gained particular strength after the assassination of Đinđić when Boris Tadić was appointed to be Minister of Defense. He played a role of the change agent in the field, promoting a series of reformist steps, the most important being the incorporation of the General Staff under the Minister of Defense in order to avoid the General Staff's direct contact with the Chief Commander. The Ministry of Defense also established previously lacking financial control over the military. The counter-intelligence service was transformed and renamed into military security agency. The Commission of the General Staff for cooperation with the ICTY, a body suspected by the ICTY prosecutor to undermine the cooperation instead of fostering it, was dismantled. The problematic ties with the army of Republika Srpska (a part of thee Federation of Bosnia and Herzegovina) were loosened, made more transparent and brought in line within the Dayton agreement. Some

[474] See also Dallara, 2008, Baracani, 2005.

personnel changes also took place, with the retirement or dismissal of a considerable number of high-ranking officers, some of whom were closely linked with the former regime or accused of war crimes. Tadić's reformist activities included the drafting of a series of legislations, aiming to establish a "modern, non-aggressive army that is under strict civilian control". However, the rule adoption, requiring the co-operation between the federal and republican levels, was slow and difficult[475]. The State Union parliamentary committee was supposed to ensure democratic control over the military but had never succeeded in that function, being a rather weak body and lacking the necessary competencies. As far as the conscientious objection and establishment of the alternative service is concerned, while in 2003 and 2004 positive developments took place, in practice the possibility to be of an alternative service was strongly limited, and the amendments adopted in January 2005 introduced further limitations.

The peaceful dissolution of the State Union of Serbia and Montenegro removed the deadlock created by the uncertainty and blockage of the federal institutions. Being Serbia the heir of the state union, it also inherited the union's army, settling with Montenegro the issues of military property and personnel. The Ministry of Defense and Ministry of Foreign Affairs were passed to the level of Serbia (the minister of defense being nominated with delay). The constitution adopted in 2006 underlined the principle of the civil and democratic control over the army, but left it to the Law on Army to settle the mood in which this control will be exercised. In the meantime, the parliamentary procedures were amended in order to allow the formation of the Committee for Defense and Security that shall supervise the security sector.

While the new constitution, in its part on the military and army, was positively judged (international actors underlining the necessity for its further implementation, see the Venice commission's opinion on the constitution of Serbia, EU Commission report on Serbia 2006), according to the domestic experts the constitution failed to address a series of issues, and in some cases it even opens the possibility for some undemocratic interpretations. The national assembly is given the power to "supervise the work of the security services", but this formulation, according to the domestic analysts, is unsatisfactory as it does not include other agencies of the security sector, such as army, police, or private security services. They also underline that, instead of "supervision", the assembly shall be given the power to "control" the work of the entire security sector. The constitution, while stating that the National

[475] Jazbec, 2005, underlines the complex characteristics of the Union (an increasingly loose federation, ongoing internal political rivalry in Serbia between progressive and conservative nationalistic forces, economic and social impoverishment, and the issue of Kosovo) as the major reasons for the very slow pace of the reform during the last years.

Defense Strategy should be adopted in parliament, failed to ensure that the National Security Strategy, according to domestic analysts much more important document, is also adopted in the assembly.[476]

The president of Serbia kept the large competencies of the Commander in Chief: according to the Article 112, he commands the Army and appoints, promotes and relieves the army's officers. The constitution, however, failed to address the problem of relationship between the president and the Ministry of Interior. And, even more important, the president can be held responsible only for acting against the constitution, which leaves us with the question "to whom is the president responsible for commanding the army?". The article on the army underlines that the army can be active outside Serbia only if allowed by the assembly, leaving the use of the army within Serbia's borders to the president, who is the Commander in Chief. As, moreover, the constitution left the role of the army rather vague, and as Kosovo, according to the constitution, is part of the Serbian territory, this means that the Serbian president can, without the approval of the parliament or of any other body, unilaterally decide and at any moment to use the army against Kosovo[477]. Such solutions were a source of serious security concerns in the period of the presidential election, when the possible victory of the nationalistic candidate Nikolić was perceived as a potential threat to the fragile peace in the Balkans. As authors Ejdus, Popović and Savković concluded, the Serbian constitution in the hands of the democratically-oriented leader has good potentials for developing democratic civil-military relationships. But, seen the possibility for ambiguous interpretations, such democratic control is not given adequate constitutional guarantees.

The constitution also failed to establish the National Security Council, even though the creation of such body was proposed already in January 2006. It was finally formed as a part of the long and difficult negotiations over the control of the security sector in the process of government formation in May 2007, when the Minister of Justice, Minister of Defense, Minister of Police, the heads of all security agencies, prime minister and president were assigned as the members of the newly formed council. The dynamics that brought to the creation of the National Security Councils show the importance of the control over the security sector in Serbia and reveals the importance of the political pluralism for the process of democratization. The formation of the government in spring 2007 was, among other, obstructed by the question over who will control the security sector (revealing the political

[476] See Ejdus, Popović, and Savković, 2006.
[477] See Ejdus, Popović, and Savković, 2006.

rather than civilian democratic nature of the control over the use of violence). The lack of prevalent actors brought to a situation where the compromise was necessary, bringing to the creation of the council as an institution that, through the inclusion of different actors, will ensure the joint control and limit one actor's prevalence in the sector.

After the adoption of the constitution, the reform of the military continued with the preparation of the Laws on Defense, the Law on the Army and the Law on Basic Organization of Security Services being prepared and adopted in the deadline prescribed by the Constitutional Law (December 2007). Even though repeating some shortcomings from the constitution, mainly due to the short-time period for the rule adoption (like the unclear distinctions of competencies between the president, minister of defense, chief of staff etc), the legislation put in place in December 2007 is perceived to be the first positive step towards the establishment of the civilian control over the military. Some of the loopholes identified in the constitution were removed, and the principle of the civilian democratic control was included in the legislation[478]. However, as underlined by the EU report, "the reform in this sector still has to be completed and the new parliament needs to ensure effective democratic oversight". The legislative basis for such oversight were put in place, but, as showed by the blockage and inactivity of the Parliamentary Committee for Security and Defense provoked by the political crisis during the 2008, the existence of the legislative guarantees does not automatically means their implementation.

15.1.2. EU Promotion of the Military Service Reform

The reform of the military forces was a subject of the rules promotion by EU, CoE, and NATO. The civil control over the armed forces and the reform of the army were subject to the conditionality as well as to the socialization strategies,[479].

The EU was pushing strongly for the reform of the military sector, considering it a necessary step in the democratization process, as well as the biggest (together with other security forces) potential obstacle to the cooperation with ICTY. The cooperation with ICTY was also a very salient issue in the reform of the army, as many members of the VJ were involved in war crimes. The technical assistance and monitoring were undertaken by the Geneva Centre for the Control of Armed Forces, giving the recommendations for the reform

[478] See EU Commission progress report for Serbia, 2008. For the analysis of the law draft and for the detailed analysis of the provisions concerning the lines of command and civilian control over the military in constitution and drafted laws, see Popović, 2007. See also the Law on Defense, Law on Military, Law on Basic Organization of Security Services.

[479] For the actions undertaken by the EU in promoting the military reform in Serbia, see also Baracani, 2005.

process. In the priorities needing attention in the following 12 months, the recommendations of the EU Commission tackled the army reform by underlining the necessity to undertake the reform "in line with the proposal by the Geneva Center for Control of Armed Forces". The lack of civilian control and the "disturbing presence of elements from the previous regime", the "potentially problematic links with the army of the Republika Srpska" and the obstruction of cooperation with ICTY were considered as the most important issues in the reports 2002 – 2003.

The steps undertaken by Tadić during his performing as the minister of defense and the reformist turn in the 2003 – beginning of 2004 were all praised as positive steps, resulting in a positive assessments in the 2004 report, and the lack of explicit requests for the strengthening of the civilian control over the armed forces in the 2004 EU partnership with Serbia and Montenegro. However, the lack of effective reform and the lack of implementation of the existing laws resulted in a return to the establishment of the civilian and democratic control as a priority in 2006 EU partnership, showing the EU malcontent with the lack of progress in the sector.

The NATO's influence over the democratization process was limited, as the prevalence of the security and strategic concerns over the normative criteria brought to the Serbian entrance in the Partnership for Peace even though it did not comply with some of the crucial political requirements made by NATO.[480] However, the membership in the Partnership for Peace is an important step in the socialization of Serbian army. NATO already stressed that it will strengthen the assistance for the reform of the army in Serbia.

15.1.3. Assessment of the Reform

The reform of the military sector proved to be an even more complicated process than the reform of other forces of the security sector, as the different levels of competencies, the lack of legitimacy and the unclear statehood seriously blocked the reform. We can distinguish different moments in the reform, different cycles of change or stagnation: the period prior to the assassination of Đinđić and Tadić assuming the office (2000-2003), characterized by the lack of any significant progress, the period of the positive developments (2003-2004), the period of stagnation due to the lack of coordination between the different state levels (2005-

[480] http://www.b92.net/info/vesti/index.php?yyyy=2006&mm=11&dd=29&nav_id=221737&nav_category=11.

2006) and the current positive moment that begun with the dissolution of the State Union and continued with the adoption of the new constitution.

In the first years the reform was blocked due to the presence of strong veto players on key positions (Pavković, Tomić, but also Milutinović and Koštunica) and political conflict both between the constituent republics and within the Serbian ruling elite (Serbia – Montenegro, Koštunica – Đinđić). In this period only a few changes took place (replacing Pavković, severing relations with Republika Srpska), mainly due to the strong international pressures.

The change started in 2002, when the reform of the security sector and especially the intelligence service became Đinđić's government's priority after the arrestment of Perišić. But the steps taken were clearly dictated by this event, and only after the assassination of Đinđić and Tadić's nomination for the Minister of Defense on the federal level, a strong impetus for the reform came, this time from the sector itself. The period of 2003-2004 was dedicated to the army reform and legislation drafting, but, unfortunately, the laws drafted in a transparent manner were not adopted due to the blockage in the assembly of the state union.

The parliamentary elections in Serbia brought to a change in the government and cohabitation between the Federal Minister of the Defense (Tadić) and the new Serbian Prime Minister (Koštunica). At the same time, the Montenegrin insistence on the independence further undermined the functioning of the state union's parliament. The reform was blocked between the plurality of the decision makers in conflict, non-functional state level institutions, obstructions from within and the lack of financial resources. The further developments in the period 2004-2005 showed very slow and difficult improvements. On the other hand, the international pressures for the reform were weakened seen the positive developments in the previous period that gave the hope that the process of the reform was underway.

Some significant steps in the reform of the civil-military relationships were seen only after the disintegration of the state union and the adoption of the new constitution in 2006, confirming Zveržhanovski's thesis on the statehood problem as a fundamental obstacle in establishing the civilian control over the military. Not only did the solution of the statehood problem increase the legitimacy of the military, but also the newly gained independence re-opened a window of opportunity for the reform of the military sector, while the dissolution of the State Union diminished the number of the veto-players. The current distribution of power is also more positive, as there is no situation of cohabitation between the president and the government, and, at the same time, none of the actors is capable to monopolize the control

over the security sector, making the introduction of checks and balances a best solution for all actors involved. The efficiency in the rule adoption, finally reached in December 2007, was a product of a series of positive factors joining together to make such reform possible.

15.2. Macedonia: A State Without an Army

15.2.1. Developments

Unlike in Serbia, the military did not represent a threat to the process of democratization in Macedonia. Being the smallest and among the least developed republics of the Federation, Macedonia was a security consumer rather than producer in the former Yugoslavia. As other Yugoslav republics, it had the Units of the Territorial Defense (UTD), but differently from Slovenia or Croatia, where these units were used as a basis for the future national army of the independent states, in Macedonia the formation of any military/paramilitary sector was avoided until the withdraw of the JNA (Yugoslav People's Army) from Macedonia in 1992. Seeking to maintain Yugoslavia, and further, when such goal proved impossible, seeking for the peaceful secession, the Macedonian president Gligorov opened the negotiations with Belgrade to ensure the peaceful withdraw of the Yugoslav military forces from Macedonia. The withdraw of the JNA left Macedonia with very modest means of self protection: beside the police forces, the only remained security forces were the Units of Territorial Defense, poorly trained and, as the JNA withdrew all weapons, practically disarmed. The neighborhood hostile to the creation of the Macedonian state (the Bulgarians questioned the existence of the Macedonian nation, the Greeks denied the use of the name while the domestic Albanian minority boycotted the state institutions) combined with the ethnic conflict in the Balkans induced Gligorov to call for the UN preventive deployment of the peacekeeping forces in 1992. The UNPREDEP mission significantly fostered the security of the country in the period of its biggest vulnerability. Seen the difficulties in building up the security sector, the presence of the UN mission appeared precious in those first years of Macedonian independence[481].

The building up of Macedonia's security sector initiated with the adoption of the constitution and Law on Defense in 1992. Such asset, while partially favourable as the military did not represent a threat to the newly established democracy as it is often the case, was also a

[481] See Vankovska 2003a, Vankovska 2003b.

source of a series of shortcomings, mainly deriving from the particularity of regulating an institution that still does not exist, thus not having any idea about its future necessities.

The building up of the Macedonian army was a process full of improvisations shaped by the available means rather than by the security needs of the country. The new army was not formed, as it was the case in the other Yugoslav republics, by the staff from the UTD, but also used the staff that previously served in the JNA, called by the government to come back to the country and get enrolled in the new national forces, this way causing the dissatisfaction of the UTD members struggling to strengthen their influence over the emerging security sector. The improvisation in the staff resulted in its inadequate structure: while the UTD members were poorly trained, the generals and officers from JNA were not always adequately trained (many of them were trained to serve the navy or air forces)[482].

Another serious problem was the weaponry. The price Macedonia was to pay for the secession was that the JNA withdrew all weapons, and destroyed whatever army property that it could not take. The UN prohibition to sell arms to the former Yugoslav republics, the UN economic sanctions towards Serbia and the Greek embargo to Macedonia in combination with the fiscal austerity, all made the process of acquiring the necessary weapons very difficult. The new army weapons, similarly to what happened with the staff, was built from available sources, donations from third countries and through the illegal channels of the arm trafficking. The arms purchased this way were mainly outmoded, cast-off weapons, not suitable for the structure of Macedonian forces[483].

A further challenge in the creation of the security sector that the country faced was the definition of the security threat and definition of the line of defense. The main issue of concern was the multi-ethnic nature of the state, bringing the ethnic-military, rather than the civilian-military questions to focus. There was a lack of basic consensus on what is actually a threat to the Macedonian state and, consequently, what shall the competencies of the military be. The role of the army in the nation-building process was rather troublesome. While in the constitution the army was defined as those whose task is to protect *all citizens of Macedonia*, and while Macedonians insisted to avoid the nationality key in the requirement based on the professionalism principle, the very low representation of the Albanians in the army caused their dissatisfaction. Combined with the boycott of the Macedonian institutions and of the obligatory military service, and the calls for the creation of the Albanian paramilitary security

[482] See Gareva, 2003b.
[483] See Vankovska, 2003a, Vankovska 2003b, Gareva, 2003b.

sector, this only brought to the further deepening of the inter-ethnic mistrust[484]. The question of the loyalty persisted for years as the key question of the Macedonian security sector. Can the state of Macedonia rely on its citizens belonging to the Albanian minority when the security of the country is at the stake? And similarly: can the Albanians trust the Macedonian state and army? The answers to these questions did not only divide the Albanians and Macedonians, but also drew a line between more nationalistic and less nationalistic political options within the same ethnic group[485].

It was no surprise then that Macedonia did not succeed in reaching the consensus on its national interest and definition of the national security threats, which, consequentially, hampered the creation of a comprehensive national defense strategy. The army was given mainly the role of the defense of the independence and territorial integrity of the country, considering the hostile neighborhood as a main threat. It was assigned the responsibility in the external security, without envisaging any domestic missions for it. During the 2001 ethnic violence, the army was also included in the conflict, the surveillance of the borders being of great importance seen the links between the Albanian paramilitary forces in Macedonia and the UCK, active in the neighboring Kosovo. The 2001 crisis revealed a series of shortcomings in the Macedonian security sector: lack of clear division of competences between the Ministry of Interior and Ministry of Defense, unclear lines of command, inadequacy of the security strategy and, above all, the lack of political and ethnic consensus over what Macedonian national interests are.

As far as the civilian control over the military forces is concerned, the legislative framework put in place in 1991-1992 (made of the constitution and the Law on Defense), included the principle of the civilian control over the security forces, envisaging a series of measures in the field. The importance of such principle can be found in the constitutional Article 97, which prescribes that the key position in the administration of the security sector (the minister of defense and the minister of interior) can be occupied only by the civilians that prior to the appointment on these position had a civilian status at least for 3 years. However, due to the complicated constitutional design of Macedonia and the political system with nominally strong parliament and dual executive, the complicated balance between these institutions and a large difference between the legal principles and every day practice, the difficulties in exercising the civilian control over the military emerged, particularly during the 2001 ethnic conflict. The

[484] See Vankovska 1998, Vankovska 2003a, Vankovska 2003b.
[485] See Vankovska 2001, Pietz, 2005.

lack of defense strategy, as well as the timetable of the reforms, the mechanisms of control and accountability being prescribed *before* the creation of the body to be controlled, all contributed to such problems[486].

By the Law on Defense, the assembly was given a crucial role in controlling the army, as it was assigned the power to control the government in the matters of the defense policy, the power to decide on war and peace, the control over the security sector's budget. In the changes introduced in June 2001 (the legislation was a part of the reformist efforts initiated in 1998 due to the country's determination to enter the NATO), the powers of the assembly were increased, giving the assembly an important role in the adoption of the National Security and Defense Concept that would later serve as a basis for the president to adopt the National Security Strategy and Defense Plan[487]. While the competencies of the assembly increased, however, the general position of the Macedonian assembly, which is often reduced to play a role of the rubber stamp for what was already decided in the government, and, in particular, the lack of civilian experts in the assembly that would allow the effective parliamentary control over the security, continued to hamper the democratic control over the military[488].

The president is another important institution in the chain of the control over Macedonian army. Like in Serbia, the president is given the role of the Chief Commander and enjoys important powers in the control over the security sector. The presidential power over the defense sector and the relationship between the president and the government in the security issues is not tackled by the constitution and it is supposed to be established by the Law on Defense. However, the 1992 legislation failed to precise the presidential powers and to distinguish between the Ministry of Defense's competences and those of the president, leaving the relationship between the president, Ministry of Defense and Chief Staff unspecified. The dual accountability of the General Staff both towards the Chief Commander (the president appoints and dismiss the Chief of Staff) and towards the Ministry of Defense (to which the General Staff is accountable and submitted), creates a situation of potential deadlock in the cases of the conflict between the president and the minister of defense. During the 2001 violence the conflict between these two figures created a problem in the coordination and use of military forces.

[486] See Gareva 2003a, Gareva 2003b, Vankovska 2003a, Vankovska 2003b.
[487] See article 14 and article 17 of the Law on Defense 2001.
[488] See Pietz, 2005.

While the president appears to be given the guiding role in the executive on the matters concerning the defense, due to the lack of clear definition of his competencies the role of the president and his influence over the defense issues practically depend mainly on the identity of the president. In the period of Gligorov's presidency, due to his strong personality and respect he enjoyed as a father of the country, due to the partisan fidelity of the army staff (particularly of those coming from the JNA, supportive for the SDSM, heir of the communistic party in Macedonia), and due to the position Gligorov enjoyed in the party, the president succeeded in keeping full control over the army and defense sector.[489] Local and international analysts underlined the personalistic, rather than constitutional character of the security system in Macedonia in that period[490]. As the minister of defense, in his work, is strongly linked to the president, in the period of Gligorov's presidency he also exercised a crucial role in the appointment of the minister of defense.

The president's dominance over the security sector vanished with the arrival of the far less charismatic Trajkovski to the position of the president in 1998, when the control over the defense sector practically passed in the hands of the government, prime minister and minister of defense being the principal actors, in some cases even overpassing the president.

The power of the president to influence the army through the appointing of the high army officials was used, together with the powers in recruitment and staffing enjoyed by the Ministry of Defense, to influence the composition of the army, bringing to its politicization – which represented a further source of concern. We already underlined how Gligorov enjoyed the support of the army officers, due to the "communist" legacy they had in common. After the change of the government, the political purges began, resulting in what some authors labeled as the VMRO-isation of the army[491]. Such changes in the staff of the security sector, particularly in the Ministry of Defense, remained constant in the years to come, following a similar pattern of the overall politicization of Macedonian institutions.

Another important institution in the design of the mechanisms of the control over the military is the National Security Council, designed by the Constitution as a body with advisory function. According to the 1991 constitution, the council was composed by the President of Republic, the president of the national assembly, the Prime Minister, the Ministers of Defense, the Minister of Inner Affairs, the Minister of Foreign Affairs and three members to be

[489] See Vankovska, 2003, 2004.
[490] See Vankovska 2004.
[491] See Vankovska 2003, 2004.

appointed by the president. After the signature of OFA, the Article 86 of the constitution was amended in order to allow an equal representation of the national minorities in the National Security Council, this way ensuring a better inclusion of the Albanian minority[492].

After the 2001 and OFA signature, the reforms of the security sector were pushed forward in a much more intense manner. The security of the country revealed to be fragile, opening a window of opportunity to foster the reforms. Some measures, like the adoption of the Law on the Defense in June 2001, were undertaken already during the conflict. A series of shortcomings that were revealed during the crisis threatening the country's security[493], the financial scandals that bursted showing the abuse of the funds, the necessities created by the OFA, the pressures from the NATO in order to foster the country's security and ambition to enter the NATO all represented strong inputs pushing forward a more intense and comprehensive reform.

As prescribed by the Article 17 of the Law on Defense adopted in 2001, the assembly finally adopted the National Security and Defense Concept in 2003, which represented the basis for the Strategic Defense review adopted in 2004. The Army Service Regulation Law was adopted in 2002 and amended in 2003 and 2005, providing support for the recruitment and retention of the military by creating a personnel management system based on a rank structure, developing a NCO corps and systematic military education. In line with the NATO requirements, the reorganization of the army was mainly concentrated on downsizing and restructuring the forces, rather unpopular and costly measures that created internal resistance to the reforms and caused the further increase in an already very high unemployment rate. Further resistance to the reform was created due to the obligation deriving from OFA to ensure the equal representation of the minorities, and actively promoted by the Albanian minority and the international actors. In practical terms, this meant the downsizing and degradation of the staff[494] on one side, and the training and the requirement of national minorities, in particular the Albanian national minority members, on the other. The actors opposing the reforms used arguments similar to the ones we reported above: would the

[492] See Ohrid Framework Agreement..

[493] Among the shortcomings revealed in 2001 we should remember in particular the old and inadequate weapons, failures of the security forces to react preventively even though the information on the activities near the Kosovo border were available, the lack of coordination between the army and police, and lack of cooperation between the president, Prime Minister, minister of defense and minister of interior.

[494] As it can be seen from the data published in the Strategic Defense Reviews, the new structure prescribed major cuts in the officer, NCO and civilian staff, but an increase in number of the contract soldiers.

Albanians be loyal to the Macedonian state? Shouldn't the profession and merit-based system prevail in the process of recruitment, instead of using the ethnic key?[495]

In 2003 the first steps were also introduced in order to clarify the roles of the ministries of interior and defense and to pass the border protection from the army to the border police. The duties were completely transferred by the end of the 2005, together with a part of the staff that undertook the re-qualification training.

Strongly determined to apply for the NATO membership, the Macedonian government pushed forward the necessary reforms, completing the reform and full professionalization of the army by 2007 and passing from security user to security producer by participating to the NATO missions in Afghanistan and Iraq.

15.2.2. The Role of the IA

As the principle of the civilian control over the military was already introduced in the Macedonian constitution and, within the limits of the Macedonian democracy, reflected in the legislation, the issue was not a subject to the EU or CoE recommendations (if not indirectly, through the requirements concerning the strengthening of the parliament, the de-politicization of the administration or the more active inclusion of the civil society organizations in the decision-making process in general). Seen that the army was given mainly the competencies in the external security, leaving the internal threats to be dealt with by the police forces, the EU mainly concentrated on the issues concerning the police reform (see the next section), the only requirement tackling the Ministry of Defense being that of calling for a clear and comprehensive definition of the respective competences of the Ministry of Interior and Defense, and with this linked the transfer of the control of borders to the competencies of the ministry of the interior.

Far more important in promoting the changes in Macedonian military sector was NATO, as the country's ambition to join this institution gave NATO the possibility to successfully promote its standards and norms in the country. The importance of the role NATO played in restructuring the security sector in Macedonia was so high that the reform of the Macedonian army is classified as an "external project" where the domestic institutions served only as a rubber stamp. The country even succeeded in gaining the appraisals for the reform, considered in different points far ahead of Albania and Croatia, other two countries seeking

[495] See Pietz, 2005.

for membership in the same period. However, the final goal of the country, the membership in the NATO, was blocked in July 2008 by the Greek veto due to the name dispute[496].

15.2.3. Assessment

Unlike in Serbia, the principle of the civil control over the security forces in Macedonia was guaranteed from the early periods of its independence. The implementation of such norms met some obstacles in practice, particularly in the first years, due to the overall deficiencies of Macedonian democracy, the lack of institutional capacity of the parliament and weakness of the civil society in particular.

However, even though not a subject of our study, we shall underline NATO's capacity of promoting the reform of the military sector even in a situation when unpopular decisions and delicate problems are to be handled (like the downsizing of the military forces and the equal representation of the minorities). Even though the international actor differs, here again we can identify a similar pattern to the one we found in the administration reform or decentralization process: the compliance with the externally imposed requirements and recommendations was achieved thanks to the International Actor's action coupled with the presence of the domestic agents pushing for the reform. The Albanian minority strongly pushed for the equal representation, a most difficult issue in the entire process, while at the same time, the spread consciousness of the need to reform the country's security sector, (strengthen by the 2001 crisis that showed the inadequacy of the domestic structures) induced the Macedonian politicians to seek for the changes. Finally, the deficiencies in the sector are those we found in other fields as well, politicization of the ministry and the prevalence of the spoilt system in the requirement, which can be explained with the security-prevailing approach of the international actors that chose not to push too strongly on those matters that are of utmost importance for their domestic partners.

15.3. A Comparative Assessment

The two analyzed countries faced completely different problems in the process of the establishment of the civilian control over the military, which correspond to the substantial differences between a state without an army (Macedonia) and an army without a state

[496] On the international influence on Macedonian security sector see Kljusev, 2003. Also Pietz, 2005, b.

(Yugoslavian People's Army). In Macedonia the civilian control over the army was established much earlier, at the very beginning of this state's transition towards democracy, as the process of building the military sector ex-novo (starting from the institutional emptiness) created a situation where there was no military sector which could oppose the process. At the same time, though, this meant the lack of input from within and a legislation that prescribed the mechanisms for controlling an institution that still does not exist. While the civilian control of the military was included as a principle of the Macedonian newly created independent state, its implementation and realization met some difficulties, mainly deriving from the lack of a comprehensive legislative framework and of a clear division of competencies, weakness of the Macedonian civil society and the shortcomings in the Macedonian parliamentarianism that put the assembly aside and brings to the prevalence of the executive in the decision-making process.

Consequentially, the military reform in Macedonia was not subject to the EU pressures or activities, and the reforms undertaken were mainly induced by NATO in the project of Macedonia's integration into NATO. However, if we follow the developments, we can perceive how even the military reform in its more technical-military side follows the pattern we registered in other areas concerning the democratization process: the very efficient formula consisting of the external influence in form of a credible conditionality, socialization and financial assistance combined with the presence of the domestic change agents motivated mainly by the inter-ethnic re-distributive effects and influence on the inter-ethnic power-sharing mechanisms that the reform produces. But here again, similarly to other areas of development, the result is only a partial professionalization of the military: the persistence of the politicization of the sector.

Serbia faced a completely different reality: it inherited the army, destroyed in the wars in the Nineties, destroyed by Milošević's fear of the JNA, whose key people were accused in front of the ICTY and were the former supporters of Milošević's regime. It also needed to cope with a complicated institutional design, unsolved questions of statehood and political leaders who, instead of reforming, thought of (ab-)using the military for their political struggles. The international pressure did not bring any result until a more decisive approach from abroad coincided with the favorable setting on the domestic side. It appears that, at least as far as the civilian control over the military forces is concerned, Serbia is on the good track. It strengthened the parliamentary control over the military, a solution that is mediated by the

executives and political parties' control over the assembly. This brings Serbia to a position similar to Macedonia's: the level of the civilian-military control depending on the perils of their parliamentarianisms, on the weaknesses of their civil society and on the overall level of democracy in the country, rather than on the legislative framework which is considered mainly in place in both countries (and which, as we can see from the tables in the appendix, have similar structure as far as the institutional design of the sector and system of checks and balances in the sector are concerned).

APPENDIX

Table 1: "EU priorities concerning the military sector in Serbia".

2002	Army reform including security policy, the role of the army and secret services, civilian control, general modernization/ restructuring, and budgetary issues, in line with the proposals by the Geneva Centre for Control of Armed Forces - should be under way by the end of 2002. Reform of the security and police services should continue, transforming them into a service, adopting the Council of Europe's Police Code of Ethics, bringing them under clear internal and external control and improving coordination between the various services and with other state services. State security and law enforcement agencies must be separated. Prisons must be urgently brought in line with Council of Europe standards. The demilitarization of borders should be put into effect at the earliest opportunity. The principle of conscientious objection should be safeguarded and implemented.
2003	Urgent implementation of army reform in line with the proposals by the Geneva-based Centre for the Control of Armed Forces.
2004	Short-term priorities: Adopt a defense strategy and military doctrine in line with democratic principles; prepare and adopt a transparent and appropriate legal framework to clarify the outstanding issue of military property.
2006	Key short term priorities: Ensure effective democratic control over the military by strengthening parliamentary control and establishing a transparent financial management.
2007	Short term priorities: Ensure greater democratic oversight by tightening parliamentary control and establishing more transparent financial management.
2008	Ensure greater democratic oversight by tightening parliamentary control and establishing more transparent financial management.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia, author's elaboration.

Table 2: "EU priorities concerning the military sector in Macedonia".

2004	Strengthen the coordination between the Ministry of Interior and the Ministry of Defense to facilitate the transfer of competences on border control to the border police, and ensure the institutional development of border police service.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, EU partnership with Macedonia, author's elaboration.

Table 3: "The budget of the Ministry of Defense in Macedonia".

Year	MoD recivings from the state budget	State budget	Ministry of Interior, budget	MoD share in state budget	MoD/MIA
2002	5483323	71700273	5160965000	7.65	0,94
2003	5889129	67490170	5635972000	8.73	0,96
2004	6107549	66666000	5677838000	9.16	0,93
2005	5998000	66538469	6255784000	9.01	1,04
2006	5901642	81749000	6914018000	7.22	1,17
2007	6865888	79522497	6890753000	8.63	1,00
2008	7602434	89397520	8097000000	8.50	1,06

Source of data: Law on State Budget 2002. 2003, 2004, 2005, 2006, 2007, 2008, Sluzbeni Vesnik na Republika Makedonija, author's elaboration.

Table 4: "The budget of the Ministry of Defense in Serbia".

Year	MoD recivings from the state budget	State budget	Ministry of Interior budget	MoD share in state budget	MoD/MIA
2003	36217000000°		23887954000		1,52
2004	41161770000°		27809068000		1,48
2005	43213627000°		28433768000		1,52
2006	29712777000°°	548.405.821.000	33917228000	5.42%	0,89
2007	60444075000	646.466.666.100	41454312000	9,35%	1,46
2008	65344363000	611.866.849.862	41604344000	10,68%	1,57

Source of data: Law on State Budget 2002. 2003, 2004, 2005, 2006, 2007, 2008, Službeni list Srbije, author's elaboration.

° Ministry of Defense was finance by the federal budget. As the share in state budget is not comparable (on the federal level the MoD absorbed large part of the budget due to the narrow federal competencies), we bring the data for the budget of the Ministry of Interior in order to give an idea on the relative amount of MoD budget.

°°For the period may 2006 – December 2006, as Serbian Ministry of Defense was formed only after the independence of Montenegro.

Table 5: "Military reform in Macedonia, external factors" (author's elaboration).

Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	NATO.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	-
Was the issue part of the EU ***key*** short-term priorities?	No.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	No.
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.
Amount of the EU financial support to the reform in general:	-
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	-
Reform perceived by the IA as:	(NATO: security, military relations).
The main concern guiding IA's intervention in the field:	Security, military, strategy.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	-
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes (UNDEP presence. NATO mission).
Were the recommendations made by the IA accepted?	Yes.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	-
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	Yes (NATO requirements).

Table 6: "Military reform in Macedonia, domestic factors" (author's elaboration).

Domestic input for the change:	Shortcomings relieved during 2001.
Domestic actors pushing for the reform:	Present partially (Albanian minority requiring the equal representation).
Level of conflictuality of the issue:	High.
Type of the conflict and main line of the conflict:	Inter-ethnic, inner opposition to the reform.
Did the issue concern the deep divisions in society?	Yes.
Type of the issue (salience - positional):	Salience.
The main beneficiaries of the status quo:	Macedonian ethnic group, parts of the military fearing cuts.
The main beneficiaries of the change:	Albanian ethnic group.
Is the existing status quo strongly delegitimized by all relevant actors?	No.
Two or more alternative solutions present?	No.
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluidity.

Table 7: "Military reform in Macedonia, outcomes" (author's elaboration).

The procedure of law drafting:	Prevalence of the international actor in giving the suggestions during the law drafting (NATO).
The main deficiency in the adopted legislation:	Still persistent politicization and spoil system.
The main beneficiaries of such deficiencies:	Political parties.
The status (2008):	Rules adopted, mainly implemented, reform successfully completed.
The EU comment in the 2008 report:	Not commented.

Table 8: "Military reform in Serbia, external factors" (author's elaboration).

	The lack of reform 2000-2003	The reform 2006 -
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	-	-
Was the issue part of the EU ***key*** short-term priorities?	No.	Yes.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.	No.
Amount of the EU financial support to the reform in general:	-	-
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	-	-
Reform perceived by the IA as:	Necessary in the process of democratization.	Necessary in the process of the democratization.
The main concern guiding IA's intervention in the field:	Democratization, security.	Democratization, security.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	-	-
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Made available yet not used.	Yes.
Were the recommendations made by the IA accepted?	No.	Yes.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	-	-
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	-	Yes.

Table 9: "Military reform in Serbia, domestic factors" (author's elaboration).

	The lack of reform 2000-2003	The reform 2006 -
Domestic input for the change:	Present (regime change).	Constitutional reform.
Domestic actors pushing for the reform:	-	-
Level of conflictuality of the issue:	Very high.	Low.
Type of the conflict and main line of the conflict:	Continuity-discontinuity.	-
Did the issue concern the deep divisions in society?	Yes.	-
Type of the issue (salience - positional):	Salience.	-
The main beneficiaries of the status quo:	Old elite, army.	
The main beneficiaries of the change:	New democratic elite.	
Is the existing status quo strongly delegitimized by all relevant actors?	Yes.	-
Two or more alternative solutions present?	Yes.	-
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluidity.	Stability/fluidity (since 2008).

Table 10: "Military reform in Serbia, outcomes" (author's elaboration).

	The lack of reform 2000-2003	The reform 2006 -
The procedure of law drafting:	-	Transparent, inclusive.
The main deficiency in the adopted legislation:	No rules adopted.	Mainly good.
The main beneficiaries of such deficiencies:	President (elite commanding the forces).	-
The status (2008):	-	Rule adopted, need to be implemented.
The EU comment in the 2008 report:		Overall, there has been some progress on civilian oversight of the security forces, with the adoption of a number of laws. Reform in this sector still has to be completed and the new parliament needs to ensure effective democratic oversight.

Table 11: "The civil control over the military sector in Macedonia and Serbia, according to the relevant legislation in force" (author's elaboration).

Macedonia		Serbia
President.	*Commander in Chief:*	President.
Constitution (1991).	*National Council established thought:*	Government's regulation (May 2007), Legislation (December 2007).
The President of Republic, the President of the National Assembly, the Prime Minister, Ministers of Defense, Minister of Inner Affairs, the Minister Foreign Affairs and three members to be appointed by the president. The equal representation criteria should be satisfied.	*National Council composed by:*	President of Republic, Prime Minister, Minister of Defense, Minister of Interior, Minister of Justice, the Chief of Staff, the heads of the security services.
Prime Minister.	*Minister of Defense proposed by:*	Prime Minister.
Assembly.	*Appointed by:*	Assembly.
Assembly.	*Accountable to:*	Assembly.
Ministry of Defense.	*General Staff under:*	Ministry of Defense.
President.	*Chief of Staff appointed by:*	President, in consultation with the Minister of Defense.
President.	*Chief of Staff dismissed by:*	President, in consultation with the Minister of Defense.
President, Minister of Defense.	*Accountable to:*	President, Ministry of Defense.
Ministry of Defense (one agency).	*Military security agency, Military intelligence agency controlled by:*	Ministry of Defense (two distinct agencies)..
- Controls the governmental acts concerning the defense e monitors the preparation of the defense of the state; - Establish the existence of the direct military threat of attack on the state; - declares the state of state of war; - Decides on the amount of the financial resources for financing the defense; - Approves the budget for the war emergency; - Decides on the entrance and exit of Macedonia in the (international) collective systems of security and defense; - Ratifies international treaties concerning the entrance, transfer or hospitality to the foreign armed forces on Macedonian territory for the needs of training activities, training, participation in the military and humanitarian operations, as well as for the participation of the army of Macedonia in such activities abroad; - Adopts the National Conception of Security and Defense; - Decides on the commemoration day of the Army and Civil Protection Unit;	*Parliament:*	- Decides on war and peace, declares the state of emergency and the state of war; - Adopts the strategy of the national security; - Adopts the Strategy on defense; - Adopts the plan of development of the defense system; - Ratifies the international treaties in the field of the defense and military cooperation; - Decides on the limitation of human rights during the state of emergency and state of war; - Adopts the annual report of the Government on the state of affairs in the field of preparation for defense; - Decides on usage of the Army of Serbia out of the borders of Serbia; - Decides on the participation of the staff of civil protection and of employees of the state administration in the humanitarian or other activities abroad; - Decides on the amount of the financial resources for

- Adopts the decisions and resolutions concerning the implementation of the system of defense, plans on the development of the defense; - On the request of the Assembly, and non less than each two years, the Government is obliged to submit a report on the system of defense and plan of development; -In order to acquire the necessary understanding of the activities of Macedonian Army, each deputy has a right to require from the minister of defense to organize his visit to the units, commands and headquarters of the Army.		financing the defense; - Analyze the implementation of the Plan of Defense; - Monitors the work of the security agencies; - Undertakes other activities prescribed by the law.
- Adopts the Strategy on the Defense; - Adopts the Plane of Defense; - Prescribes the measures of readiness and orders their implementation; - Establishes the organizations and formations of the Army; - Adopts the documents necessary for the functioning of the Army and orders their implementation; - Approves the documents concerning the development of the Army; - Prescribes the measures for increase of the military readiness and orders their implementation; - Orders the mobilization of the Army; - Prescribes the lines of command in the Army; - Adopts the documents concerning the military readiness, armed conflict and mobilization of the army; - Appoints and dismiss the generals and the commandeer staff; - Appoints and dismiss the military representatives of Macedonia abroad; - In exercising the functions in the field of the defense, the president of Republic is a Chief Commander and adopts the sub-legislative acts.	*President:*	-Together with government the president submits to the assembly the proposal for declaration of the state of war or state of emergency; - Approves the draft on the Strategic review of defense of the Republic of Serbia; - Following the proposal of the MoD, adopts the Doctrine of Army of Serbia; - Orders the implementation of the Plan of the Defense of RS; - Establishes the basic peacetime and wartime organizations of the Army of Serbia, following the proposal of the MoD; - Adopts the Plan of Mobilization of the Army of Serbia; - Orders the implementation of the measures of military readiness, general or partial mobilization.

Sources: Law on Defense of Republic of Serbia, Constitution of Republic of Serbia, Law on Defense of the Republic of Macedonia, Constitution of the Republic of Macedonia.

16. POLICE REFORM

"The main political problem is how to prevent the police power from becoming tyrannical This is the meaning of all the struggles for liberty"
Ludvig Von Mises.

In the previous section we underlined the importance of the civilian control over the security sector and included the democratic scrutiny over the use of violence, on which the state has the monopoly, among the criteria for a state to be considered democratic[497]. We also underlined how the security forces often threatened the democratization process, particularly in those cases where the non-democratic regime was guided by the military, generals, juntas and similar corps or where these figures were included in the coalition at the head of the authoritarian regime. The security agencies thus have their own interests in the process of the regime change and, where the security agency as the political actors got involved in the abuses of power, violation of human rights, repression and criminal activities during the non-democratic regime, they are unwilling to give away the power or they might even fear judicial prosecution. In these cases the security sector represents the difficult heritage from an ancient regime which has to be handled with care. This was precisely the situation of the police forces in Serbia that, due to the importance they had in maintaining Milošević's regime[498], represented one of the obstacles to the democratization in Serbia, representing what some Serbian authors named the "limits of Serbian democracy". The control over the security sector (in this section we will analyze the police forces and intelligence service), the mechanisms of the accountability of the security forces, their ethics and relations towards the rule of law and human rights are important dimensions of any political regime, and the democratic control over the efficient, professionalized, responsible police represents a key dimension of democracy.

[497] On the link between the state and monopoly of violence, see Weber. On the link between the civilian control over the use of the violence the state has monopoly on as a criteria for a state to be considered democratic, see Vankovsa and Wiberg, 2003.
[498] See Trivunović, 2003.

Further on, as Caparini and Marenin argued, "The police occupy a crucial political role in any society – by virtue of the realities of their work (their structural position in state-society relations, and by what they do and how they do it), and by the symbolic representations of their work and its impacts upon the political and social discourse (Manning 1997). The police are part of the system of governance (Shearing 1996). They matter in processes of state creation, the reproduction of peaceful social relations, the peaceful resolution of conflicts, and in the creation of social identities and bonds which underpin political life (Loader and Walker 2001)" (Caparini and Marenin, 2003, p. 2). The lack of legitimacy or of capacity and efficiency can hamper the police's capacity to perform its duties, hampering the rule of law and democracy in the country. We will see how in Macedonia's case one of the biggest obstacles to the democratization of the country and a most serious threat to its security derived form the difficulties in maintaining the control over parts of the territory.

The problem becomes twofold: how to ensure that the police are given enough power and authority to do their work but, at the same, to avoid the risk that they harm the well being of society and individuals? The democratization process usually means also the reform of the police sector with the legitimacy, professionalism and accountability as the main values to be pursued through the reform (see Caparini and Marenin, 2003).

In the following sections we will describe the police reform in the two studied countries. Both countries experienced the violence that saw the extensive involvement of the police forces and brought to the creation of paramilitary units. The politicization of the police, corruption, the lack of accountability mechanisms capable to ensure the respect for human rights and the power abuses were also the characteristics in common. On the other hand, while in Serbia the strong police forces represented a heavy heritage from the previous regime that based its rule on the police, intelligence service and secret police, in Macedonia the ethnically homogenized police forces coped with the difficulties to maintain the control over the parts of the territory and to fight back organized crime gangs that used the ethnicization of the issue to challenge the justice.

16.1. Serbia: Burdens of the Heritage

16.1.1. Police and Secret Police: Dealing with the Past.

Developed as a crucial pillar of Milošević's regime, involved in war crimes, every day violation of human rights, and even in corruption and organized crime, Serbian police, its special units and intelligence service were sectors urging for immediate reform after the 5th October[499]. However, as literature on the democratization teaches us, the security sector was also the most difficult to reform and might represent the biggest obstacle to democracy.

Even though labeled "revolution", the risk of Milošević using police and special units against the citizens made the "negotiation approach" a necessary step in the process of regime change in Serbia. The resignation of the police forces in front of the participants to the protest and the support offered by the Unit for Special Operations (JSO) testified that the cooperation of security forces was ensured through the agreements achieved during the preparation of the protest. As the murder of the Prime Minister Đinđić by the head of the JSO and different testimonies would later show, the commitments given to the paramilitary forces in the eve before October the 5th included the promise of amnesty for all its members. The assassination of the Prime Minister, caused by his determination to strike on the organized gang with which the security forces were involved, clearly testifies on the difficulties the new democracies face in all those cases where the security forces fear the prosecution for their past and current criminal activities.

Beside the police forces and its Unit for Special Operations, another extremely important body controlled by the Ministry of Interior was the intelligence service, known as "DB"- by the secret police that everyone feared. Both the communistic and Milošević's regime made a large use of the DB, so that after the transition this institution became one of the most difficult sectors to reform. Beside the difficulties that are usually linked to the security sector reform in general, the intelligence agencies are specific for their nature. The very purpose of the intelligence agencies implies secrecy and the use of special measures, making their control (and reform) a very difficult and sensitive issue[500].

While the presence of the corrupted and compromised officers within the security sector represented an "*inner*" obstacle to the reform, the new elite starting to enjoy the benefits of the

[499] See http://www.ldpkula.org/vladimir_beba_popovic/vladimir_popovic_beba/index.html, http://www.surcin.com/?meni=informacije&podmeni=vesti&pm2=5&id=1215. On police as a key instrument of Milošević's regime, see also Antonić, 2001.

[500] See Janković, 2006, 2007.

politicized police lost the will to initiate the difficult reforms[501]. As an OSCE report on the policing in Serbia assessed, in Serbia there is no distinction between the terms "accountability" and "control", and there is an accepted view that the police shall be *controlled* by the executive (Ministry of Interior). The centralized structure of the police, its dependence on the Ministry of Interior, the lack of clear, professional criteria for the career and recruitment, a strong influence the senior officers have on the promotion of their lower rank colleagues, all these create a fertile ground for the political influence in the police lines. Similarly, the DB (and afterwards BIA) were also controlled by the ruling political parties, with the political appointees at the head of the agency.

16.1.2. The (struggle to) Reform

In the first period after the regime change (2000-2003), even though the overall structural reform and modernization were recommendable[502], the approach adopted by the domestic actors and external experts was more "individual" than "systemic". The problem of the accountability of the police was perceived as mainly a problem of *some* individuals, and sought to be solved through changes of the personnel. The shifts in the position of the Minister of Internal Affairs and Chief of Security Services were followed by replacements on a large scale: the heads of directorates, the heads of regional secretariats and the commanders of police stations were all replaced. The reduction in size of the police forces also took place, some 2.500 police officers being dismissed. Some officers were even arrested for crimes and corruption. However, the lustration was far from being complete. The Helsinki Committee for Human rights in Serbia and the Humanitarian Law center reported that numerous army and police officials who took part to war crimes and serious violations of human rights still occupy key police and army positions (Helsinki Committee 2002: 28), which shows that the "lustration" that took place was selective and mainly concerned the lower level rank officers.

The lustration was thus limited in its goal, mainly leaving aside the members of the Unit for the Special Operations or intelligence service[503]. As soon as the ruling elite showed the

[501] When in 2004 the new minister of interior set in the office, beside replacing 16 heads of police districts, he also replaced about 700 senior policemen, and this is just an example of the continuous political purges that take place on all levels. (See Pešić, 2006). As Zveržhanovski (2003) argued, fearing the lustration, parts of the security forces started to search for political protection.

[502] According to the OSCE, the following steps were necessary: depoliticization, demilitarization, decentralization, law enforcement, reduction in size and increase in civilian control over the police, human rights training, strengthening of the transparency and efficiency, establishing of the independent internal control and complaint investigation.

[503] As Janković (2006, 2007) underlined, the reform of the secret service was mainly – a secret process. The agency chiefs had announced several times that the inner reform, cuts in personnel and the lustration were

intention to tackle the sensitive question of the war crimes and to start the fight against the organized crime, the limits of the Serbian democracy emerged. The JSO protest was organized (according to some authors, directed by Koštunica and with the involvement of the military intelligence) during which the paramilitary group under the arms occupied the road, requiring the release of the two members of the Unit arrested under the ICTY charges for war crimes[504].

The changes introduced in this period where mainly concentrated on the individual members of the security forces. In cooperation with OSCE and CoE, the training in ethical and technical issues of the members of police took place. In southern Serbia, in order to calm the emerging inter-ethnic tensions, the government embraced OSCE's program of multi-ethnic policing, and the training and inclusion of the ethnic minority and female officers increased the representativity of the police[505]. As the OSCE report 2004 assesses, the approach this organization and the international community had to the reforms in Serbia in the first few years was to increase the individual integrity and strategy. However, as underlined in the report, the necessity to tackle the structural integrity and strategy soon became evident[506].

In the field of the legislative framework, no structural changes took place in this first period of the reform. In 2001 the Law on Police was drafted in cooperation with the international experts and the domestic civil society, but it was not adopted. The law draft was submitted to several revisions and changes, undertaken mainly within the government and in a process criticized as untransparent. In the following two years, the "Vision Document on the Police Reform" was also drafted, again as reported by OSCE with a very low participation of the local NGOs. However, none of these documents was adopted.

There were also some positive developments in this period: the Amendments to the Criminal Code were adopted and praised as a significant achievement (the legislation finally abolished the death penalty, defined new corruption offenses and established the institutions of the protected witness). Another positive step was the adoption of the Law on Organization and Jurisdiction of Government Authorities in Suppression of the Organized Crime (July 2002), which provided for a special public prosecutor and established teams within the Ministry of Internal Affairs for dealing with cases of organized crime. In this period the law transforming DB into BIA (Security Intelligence Agency) was also passed.

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ongoing, yet the only evidence for these are the statements of the heads of agency, other data not being available to public.

[504] See Zveržhanovski 2003.

[505] See also Dallara, 2008.

[506] See Police Reform in Serbia: Towards a modern and accountable police service, OSCE, 2004.

The Law on the Security Intelligence Agency was adopted in July 2002, representing one of the most important laws adopted in this first stage. The law finally abolished the old secret police and established an intelligence service under the governmental control. In commenting the rule adoption, the then Minister of Interior, Mihajlović, stressed that "the law is a necessary step towards the democratization and (it is) in line with the European democratic standards we aspire to comply with"[507].

Even though announced as a step in the democratization process, the rule adoption was part of Đinđić's government's reaction on the serious strike coming from the military secret service controlled by Koštunica's (former Milošević's) alley Tomić[508]. Đinđić realized that the security agencies should be reformed as soon as possible, initiating the procedure for the amendments of the existing legislation. While the changes introduced in the federal Law on the Security Agencies gained positive assessment by the EU, the Law on BIA represented a series of shortcomings that were mainly the product of the ruling elite's desire to maintain the control over the agency. The agency was subtracted from the Ministry of Interior and put under the control of the government (which in that moment meant under the control of the DOS), even though domestic and external experts advised that the authority to nominate the head of agency should be given to the parliament. The control over the agency was also perceived as problematic, as the only basis for the parliament to control it means the necessity of the agency to submit periodical reports to the MPs. According to the assessment of the researchers, as well as according to the findings of the international organizations, beside the abovementioned shortcomings, the provisions on the internal and the external control were lacking, protection of human rights also being an issue of concern[509].

The assassination of the Prime Minister by a member of the JSO opened a new chapter in the reform of the security service in Serbia. Following the assassination of the PM, the state of emergency was proclaimed, during which the Sablja investigation, aiming to identify and capture the murders of Đinđić, took place. The government amended a series of laws, giving large powers to the police and prosecutor in investigations on the organized crime, and strengthening the political control over the judiciary, the prosecutor office, and the police.

[507] Mihajlović, 17. 07. 2002. B92, http://www.b92.net/info/vesti/index.php?nav_category=11&dd=17&mm=7&yyyy=2002..

[508] The military secret agency was spying on Serbia's deputy prime minister Perišić, behind the back of the PM Đinđić or any other authority on the level of the republic, bringing to the scandal when the deputy PM was arrested by the military police. According to domestic authors, this event was just a part of the spy-war that was taking place between military controlled by Koštunica and police forces controlled by Đinđić (see Zveržhanovski , 2003, p. 10).

[509] Janković 2005, 2006, Zveržhanovski , 2003.

Some of these amendments were declared to be against the constitution by the constitutional court and abolished through the 2003 and 2005 amendments.

While the Sablja action was on the one hand praised to have effectively solved some high-profile political murders and dismantled several organized crime channels, on the other it was strongly criticized for the violation of human rights that took place during the action (NGOs reported numerous cases of torture during the investigation)[510]. The unit for the special operations was immediately disbanded, and those members with a clear criminal record were re-integrated in the gendarmerie. The severe international and domestic criticisms on the human rights violations during the state of emergency brought to the adoption of the Code of Ethics for the police in 2003, where the compliance with the European Code of Ethics was underlined. The General Inspector Office, designed to ensure the internal accountability, was also established.

In the period following the state of emergency the reforms stagnated due to the political instability and scandals shaking the ruling coalition. The new government was formed only in February 2004 and, in a sign of discontinuity with the previous period, it decided to start the reform of the police all over again[511]. The existing structure (complete integration between the Ministry of Interior and Police Service) was judged as too centralized, while the recruitment and career criteria were considered inadequate by the OSCE. Both these issues favored the politicization of the service and were hoping to be solved through the reform that as its main goals underlined decentralization, depoliticization, demilitarization and introduction of the accountability mechanisms[512].

The so long awaited for legislation on the police was drafted all over again and was finally adopted in November 2005. Even though numerous consultations with the CoE and OSCE experts took place, and even though the document was revised few times by the CoE, the adopted law was still criticized for a number of shortcomings, including: (1) a lack of a clear organizational structure; (2) a lack of a transparent control mechanism; (3) an insufficient

[510] See for example http://www.hrw.org/press/2003/03/serbia032503-ltr.htm, http://hrw.org/english/docs/2003/03/25/serbia5429.htm, http://hrw.org/english/docs/2003/04/07/serbia5507.htm, http://www.hrw.org/update/2003/04.html#12.

[511] New Minister Jocić stressed that in the previous period almost no reforms took place in the field, also underlining the necessity to bring the legislation in line with CoE standards and recommendations. He also questioned the Sablja police action, arguing that more than an investigation on the assassination it was an action guided by political revanshism. Dnevni list Danas, 15-16 maj 2004.

[512] http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=03&dd=10&nav_id=134801&nav_category=16, http://www.b92.net/info/vesti/index.php?yyyy=2004&mm=04&dd=10&nav_category=11&nav_id=137830.

definition of the powers of police officials in performing their functions[513]. The implementation of the legislation is judged to be slow, and the legislation establishing police academy is still pending.

During 2006 further developments took place, as the Law on Witness Protection in the Criminal Proceedings, the Criminal Procedure Code, the by-laws on the responsibility of the police members and on the complaints against police behavior were introduced.

However, the slow implementation of the adopted legislation, as well as the failure to ensure transparent control mechanisms, resulted in the persistence of power-abuses and neglect for the human rights protection. Here we refer both to the police failing to protect the most vulnerable and marginalized groups from the violence and to the cases of torture, discrimination and harassment by the police. The reports of the Helsinki Committee on the protection of human rights in Serbia identified cases of torture by the police, while in the interviews with the local human rights activists the inadequate attitude of the police towards the socially marginalized groups and in particular the LGBT and Roma population were reported. The lack of actions to protect their basic human rights and to ensure their physical integrity, the failure to investigate on the cases concerning the members of the marginalized communities, the refusal of the local police stations to cooperate with the NGOs protecting the rights of these groups and, in some cases, even the discrimination, the hate speech and the intolerance combined with unlawful arrests and ill-treatment by some police officers were reported in the interviews with human rights activists[514].

The administrative capacity in terms of available technical resources is one of the most important issues when we discuss the development of the police in those countries where the financial resources are insufficient to satisfy the needs in the equipment. In 2004 the OSCE report underlined the need for the national government to assign more resources to the budget for the police reform. The budget destined to the Ministry of Interior was around 6-7% of the national budget. While in this period the police budget's share in the state budget was decreasing (from 9.5% in 2002 to 6.4% in 2007), in absolute terms it actually grew, and the relative decrease was produced by the growth of the state budget. Thus, in absolute terms, taking in consideration the inflation rates, the budget of the Ministry of Interior was

[513] See Council of Europe, SG/Inf (2005) 16 final, http://www.bbc.co.uk/serbian/news/2005/10/051019_serbia_police.html, also, http://www.b92.net/info/vesti/pregled_stampe.php?yyyy=2005&mm=10&dd=23&nav_id=179009.
[514] From the interview with Jelena Ajdarević, human rights activist, Lambda, Nis, 2008.

diminished in 2003 respect to 2002, then, in 2003, 2004 and 2005 it was stable, only to sign a growth in 2006 and then another significant increase in 2007 (see the Tables in the appendix).

As far as the reform of BIA is concerned, the developments that followed the adoption of the Law on the Security Intelligence Agency are difficult to follow due to the lack of available information. It is a process that mainly took place from within: in search of legitimacy, the service made the investigations on its members possible, and replaced about 50% of cadres, increasing the education level of the service. But this kind of inside-out driven reform brings all shortcomings that derive from the lack of political will to help the reform of the agency: as Janković (2006, 2007) stresses, until the "controllers" do not provide clear signals, it is difficult that the members of BIA would find the answers to the difficult questions concerning the distinction between the state and the party politics, the national and the state security, the efficiency and the abuse of power, the blind obedience and the respect for law all by themselves.

16.1.3. The Action of the International Actors

The Council of Europe and OSCE played a significant role in the reform of Serbian police, especially in terms of technical and financial assistance. In the first period (2001-2002), the OSCE and the Council of Europe were proclaimed strategic partners of the Ministry of Interior. They invested significant resources, and OSCE organized the training in ethical and technical issues, for the newly recruited as well as for the existing cadres. The international organizations also provided clear road maps for the reform, the Monk Report on the Situation in the Police in 2001 and OSCE Report on the Developments and Further Necessities in 2004 being two crucial documents where more than 100 recommendations were made to help Serbia overcome the existing shortcomings. However, as the shortcomings identified in the new legislation testify, these recommendations were not always taken into account.

As far as the reform of the intelligence service is concerned, the sensitivity of the issue is also reflected in the approach of the international actors. While ensuring civil control over the security forces was recommended in the OSCE, CoE and EU reports, the issue was never included among the partnership priorities or was made the subject of the conditionality. Such lack of information should not be interpreted as a lack of international attention and influence in the field, as testified by the incidents following the government formation in May 2007 when the EU representative was trying to influence the assignment of the chief of the BIA[515].

[515] See http://www.osservatoriobalcani.org/article/articleview/7320/1/218 ,

16.1.4. Assessment of the Reform

As we saw, the reform of the police was a slow and difficult process, with some positive goals achieved (particularly in the training), but with delays in the rule adoption and implementation. The main cause of such difficulties in the reform can be found in the difficult legacies from the previous regime and the lack of political will to make the difficult decisions associated with the reform.

In the process of the reform, we can distinguish the period immediately after the transition, when the changes in the governing personnel and trainings took place, the international organization acting mainly through the socialization channel, in very good and highly praised cooperation with the Ministry of Interior; and the period after the assassination of Đinđić. The investigation on the assassination of the PM was at first associated with the violations of human rights and abuses of power, police once again becoming a "force" rather than a "service", but immediately afterwards, in search for legitimacy, actions like the adoption of the new Code of Ethics and establishment of the bodies for the internal control were undertaken. In the second period the international pressures were strengthened, this time concentrated on the legislative framework with requests for the substantive reform, not only modernization, as it was the case in previous periods. The pressures increased, and, as expressed in the OSCE recommendations in 2004, the assistance was to be both *oriented at* and *conditioned by* the structural changes.

The international pressure in the field became much stronger after the assassination of the prime minister, resulting in the positive developments in the rule adoption, while the rule implementation is still undermined. Serbian police, even though it had significantly changed after the change of regime, still need to be substantially reformed, such process being only partially tackled by the adoption of the Law on Police. According to the authors, supportive of the thesis of the political party's capture of the state in Serbia, the main obstacle, beside the persistence of the supporters of the ancient regime and the need for lustration, consists in the politicization (as we already described in the part on the judiciary), where the political leaders actually have no interest in the reform, as it would leave them without a significant source of power (see Pešić, 2006 p. 23) According to these authors, only a strong international pressure can bring to the reforms in the field, necessary for the consolidation of democracy.

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http://www.farmaceuti.com/forum/index.php?topic=4720.75;wap,,
http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=05&dd=09&nav_category=11&version=print.

16.2. Macedonia: In Search for Confidence

16.2.1. The Police Service Reform

Since the crash between the Macedonian police and the Albanian paramilitary groupings in 2001, the reform and re-structuring of the police forces became one of the most important issues in the process of peace building. The already low Albanians' confidence in the state institutions and police (mainly composed of ethnic Macedonians) particularly grew during the conflict between the NLA[516] and the Macedonian security forces. The NLA underlined, the ill treatment, ethnic discrimination and abuse of power by the police in the ethnic-Albanian villages were the reasons for the uprising[517], so that the structure and organization of Macedonian police forces became a central part of the Peace Agreement. The changes in the legislative framework regulating the police were included in the OFA in order to allow greater participation and more influence of the Albanian minority in this sector. The municipal councils were supposed to be given the power to select the local heads of police, the power to control their work (through reports) and the power to give recommendations to the local heads of police[518]. The principle of the equal representation in the police service was supposed to be ensured with "particular attention" and "as rapidly as possible" (article 4 comma 2 OFA), in order to achieve a police service that perfectly reflects the composition and territorial distribution of the population by 2004. The training, particularly in the fields of human rights protection, professionalism and development of a code of police conduct was assigned to the international actors (OSCE, EU, USA in particular) who were also asked for technical assistance and deployment of international monitors and police advisors in sensitive areas.

In the aftermath of the 2001 conflict, Macedonia had a police service mainly composed of Macedonian ethnic majority, mainly distrusted by the Albanian minority, with a record of serious violation of human rights and the feeling of impunity inherited from the "old times". The special unit "Lions", formed within the police by VMRO (which then was in power), represented another serious problem, seen the criminal background of some of its members,

[516] NLA is the acronym for "National Liberation Army", a paramilitary grouping of the Albanian ethnic community in Macedonia.

[517] The Amnesty International and Council of Europe reports also on the cases of the ill-treatment and even the crimes against humanity committed by the police forces(2001).

[518] "…In order to ensure that police are aware of and responsive to the needs and interests of the local population", art. 3 comma 3 of OFA, art. 4 of the annex B OFA.

the partisan nature of the unit and its paramilitary characteristics. The unit was accused of abuse of power, uncontrolled use of weapons and killings, and acts of brutality and violence. Further on, during the conflict the Macedonian government lost control over some parts of its territory that remained under control of the NLA, that, still in possess of weapons, represented a serious challenge to peace and stability in the country. The links between some of the NLA members with UCK and Kosovo mafia, and, more in general, the existence of the Albanian mafia, represented another challenge to the police, as any action against the Albanian criminal gangs was easily ethnicized and politicized, making the action impossible to undertake. Seen on one hand the prevalence of Macedonians in the police service, the ill-treatment and violence abuse record of the police forces, and on the other the presence of the NLA armed fighters fearing revenge and their links with the organized crime, the re-entrance of the police into the villages under NLA control was a highly problematic issue.

16.2.2. Gaining the Confidence

The first efforts in reforming the police after the 2001 violence concerned the disarming of the paramilitary groups and regaining control over the western part of the country. The amnesty for the NLA fighters became the central Albanian requirement already during the process of OFA ratification and the adoption of the new constitution (second half of 2001). The Albanian political parties therefore conditioned their vote on the constitution with the guarantees of non-prosecution for the Albanian fighters, further complicating the already difficult process of constitutional reform (see the chapter on the constitution). The EU representative Mr. Le Roy, who arrived in Skopje with the task to solve the crisis blocking the constitutional reform, stated that he will personally care for two basic questions important for the Albanians living in Macedonia: 1. Amnesty realization and 2. Improvement of the education of the Albanian students[519]. By granting amnesty only to those fighters that submitted their arms until September the 27th, the international authorities tried to use amnesty as an incentive for the Albanians to submit the arms.

Thanks to the international pressures, the Macedonian counterpart accepted to issue a presidential decree granting the amnesty to the NLA fighters, with the exception of those individuals condemned by the ICTY and for those involved in some particularly difficult crime (a list of 30 crimes for which the amnesty shall not be granted was issued). Yet, the Albanian parties required that the assembly adopt a special law (if possible with the consensus

[519] See Gaber-Damjanovska and Jovevska, 2002, p. 10.

of all actors that signed the OFA) and that the amnesty is given to *all* NLA fighters. The minister of justice (from the Albanian party) initiated the drafting of the Law on Amnesty that, after a series of conflicts between the Macedonian and Albanian parties and strong international pressures, was adopted on March the 7th in a form proposed by the Minister. The ambiguous formulations in the legislation and very large definition of the crimes amnestied[520] were the price to be paid in exchange for the police regaining control over the whole territory, while the donors' conference, set to take place only few days after the rule adoption, served as a mean to "help" convincing the Macedonian parties. The adopted law was another case where the political bargaining prevailed over the legal and rule of law principles, according to domestic legal experts a "political act that derogates the legal system of the country" (see Gaber-Damjanovska and Jovevska, 2002, p. 12), but still a necessary step in the solution of a problem that would otherwise threaten the country's stability.

In order to facilitate the re-entrance of the police forces in zones previously involved in the conflict, and in order to implement the OFA, the authorities (in collaboration with OSCE) initiated the multi-ethnic policing program. The training was organized for the members of the national minorities and the process of building up a multi-ethnic police service started. At the same time, within the existing centre for education and training (formed in the 1998), OSCE and the Council of Europe organized the training aiming to increase the enforcement agents' awareness on human rights.

In June 2002 the amendments to the Law on Inner Affairs were adopted in order to implement the provisions of OFA. The municipal councils were given the power to elect the heads of police and to exercise the monitoring over their work, while the provisions concerning the equal representation put the basis for the enrollment of the ethnic Albanians in the lines of the police. Together with OSCE, the program aiming at establishment of the community policing was launched, and the "Citizen Advisory Groups" (CAGs) were formed in order to foster the dialogue between the local police and citizens. Drafted as informal bodies, the CAGs represented the forum that brought citizens, police and municipal structures together to discuss issues of common interest, with a goal to increase the citizens' trust in the police.

While efforts aiming to establish police as a service of citizens were taking place, the reports of the Council of Europe, Amnesty International and human-right watch agencies

[520] All crimes "linked with the 2001 conflict", despite the recommendations of the international legal experts to limit the period to which the amnesty is applied to the crimes committed since the beginning of 2001.

were reporting continuous cases of unpunished ill treatment and torture. Some improvements were registered only after the 2003 Anti-torture Committee Report that caused strong criticisms from the CoE, EU and other international actors. Pushed by the international criticism, the government undertook a series of measures in order to tackle the problem. The Professional Standards Unit was formed within the Ministry of Interior as an instrument of inner control, and the Code of Ethics was adopted in January 2004. In order to improve the training, the Law on the Police Academy was adopted in June 2003, offering specialized high education as well as continuous training and courses for the police servants. However, the lack of communication between the Ombudsman, Prosecutor and the Ministry and, in particular, the lack of the prosecutor's and judiciary independence, contributed to the impunity of the police officers.

During 2003, the problem of the Unit for Special Tasks "Lions" also emerged. The new elite, fearing the politicized unit under the opposition's influence, embraced the international pressures coming from EU and NATO and declared that the unit shall be dismissed. The Lions responded with a protest in January 2003, during which the unit threatened to open the fire on the police forces. An agreement was achieved between the government and the representatives of the unit, according to which half of the 1200 unit members, those with clean dossier, shall be employed in the Ministry of Defense and interior. The amnesty for the unit's members was also requested, but the government refused it.

Triggered by the protest of the Lions[521], by the international pressures and by the necessity to ensure the control over the whole territory, the strategy for the police reform was adopted in summer 2003. The Law on the Inner Affairs was amended again, making the distinction between the Ministry of Interior's and the Ministry of Defense's competences clearer, bringing the border control under the Ministry of Interior, and changing the structure of the Ministry of Inner Affairs. According to the new setting, the Ministry is composed of the Directorate for Security and Counter-Intelligence and the newly established Bureau for Public Security. The Police department, border police and criminal police were put under the bureau's control.

The security concerns that rose in the autumn 2003 further pushed the issue of the police reform onto the agenda, revealing the problem of the ethnicization of the organized crime. With the aim to "weaken the military bases of the Slavo-Macedonian occupier" and as the

[521] The protests of the Lions assumed a new, more threatening dimension in March 2003, when the members of a similar unit in Serbia (JSO) murdered the Prime Minister Đinđić, testifying on the importance that the developments in the neighbouring countries can have for the domestic perception of the problems.

expression of the "Albanians' desire to withdraw themselves from the slavo-Macedonian colonizers and to join Albania", the group labeled "ANA" (Albanian Liberation Army) placed bombs in the centre of Skopje. At the same time, in Tetovo and on the northern border zone (involved in the 2001 conflict), clashes between the police and the armed criminal gangs accused of robbery and kidnappings took place. As the strengthened police presence in the areas provoked the dissatisfaction of the local population, the Albanian political parties and the representatives of the armed group required the withdrawal of the police and their replacement with multiethnic patrols, the application of the Amnesty Law, the cessation of all political court processes in the country and the release of the imprisoned Albanians. The conflict became severe when the local armed group opened the fire on the security forces, which responded causing the death of two members of the group. The DUI underlined its dissatisfaction with the action undertaken by the police bringing the government into the crisis. After the international community's support for the police action, the DUI increased the pressures for the reform of the police forces in line with NATO standards[522].

In December 2003, the EU military mission Concordia ended its mandate and was replaced by a new EU mission, "Proxima", with the task to help the reform and strengthen the police. The police mission was to be lead by OSCE's police chief, and it was expected to promote the efficiency of the police forces, to improve the cooperation between the citizens and the police, and to offer the training for the Special Forces. The mission's task was mainly to offer advice and to monitor the developments in order to help the country comply with the EU standards.

During 2004, the work on preparing the police reform was intensified: the strategy was modified in January 2004 to meet the EU requirements, while the action plan was drafted in cooperation with Proxima experts and was adopted in December 2004. In 2005, the Law on the Inner Affairs was further amended to precise the procedure for the election of the local heads of police station. The Law on Police, the central piece of legislation according to the strategy, was drafted in the ministry already in 2005, but its adoption was postponed[523].

The delay in the adoption of the law caused strong critics from the EU that included the reform of the police among the conditions for granting the negotiating status to Macedonia. The security threats that rose in Kondovo in 2005-2006 only contributed to the perception

[522] See Gaber-Damjanovska and Jovevska, 2003.

[523] According to the official statements by the government, both the coalitional partners (SDSM and DUI) offered their support for the law proposal accepted by the government, and the delay was caused by technical questions. However, some domestic authors argue that the rule adoption was delayed due to the disagreement between the SDSM and DUI. See Gaber Damjanovska and Jovevska, 2005.

that the police reform would, hopefully, put an end to the ethnicization and politicization of the police functioning. The reform appeared more urgent than ever, resulting in strong international pressures in order to accelerate the rule adoption[524].

After the 2006 elections, the newly elected government proceeded with the adoption of the law drafted by the previous government. Even though there appeared to be the consensus over the law (as it was drafted by SDSM and DUI and then embraced by the VMRO/DPA government), the process proved to be difficult, seen that DUI, unsatisfied by its position in the opposition, used its parliamentary strength to obstruct the process. The party required the Badinter majority for the rule adoption[525], trying to use the Law on Police (strongly required by IA) for its bargaining with VMRO.

The discussion over the law was very intense as the ethnicization of the question further heated the already high temperature. The core questions of disagreement were: the number and allocation of police stations (the law proposed 38 police sectors while DUI was requiring 81, one for each community), the number and allocation of the police sectors[526], the years of experience necessary for the head positions within the Ministry of Interior[527], the procedure of the appointment of the commanders of police stations and of the heads of the 8 police sectors, as well as the respective powers of the minister of interior in this appointments procedure. Trying to maximize their negotiating positions, DUI included the introduction of bilingualism in the police and the army among their requirements, issues very difficult to be accepted by the Macedonian majority. Each of the issues in discussion was crucial for the distribution of power between the two ethnic groups (and political parties) and their future control over the local police forces. Seen the political influence that can be exercised on the

[524] The Kondovo case represents another example of criminal gangs using the ethnic discourse in order to avoid the justice. In summer 2005, Agim Krasniqi, accused of several criminal deeds and wanted by the police, imposed control over the Kondovo village. Seen the village's strategic position on the hills over Skopje and the strength of Krasniqi's gang (about 80 men and heavy weaponry), following strong foreign and domestic pressure, a political solution of dealing with Krasniqi's case in front of Macedonian courts was found. The continuous presence of his armed gang represented a serious problem for the zone, as some members of the group were involved in criminal acts. When, in March 2006, the police undertook an action in Kondovo for arresting criminals at large, one of them got killed while resisting the arrest and opening the fire on the police. And as in the case of ANA, the issue was again politicized provoking a clash between the Albanian and Macedonian parties. See Gaber-Damjanovska and Jovevska, 2005, 2006.

[525] Seen the distribution of the mandates, the use of Badinter would give DUI the veto power.

[526] The police sector is the intermediate unit between the local police stations and the central bureau, with the task to control and coordinate the work of the police stations, as well as with the competences concerning the criminal police. According to the old legislation there were 12 police sectors, but the new law draft established only 8 units.

[527] The original draft settled the experience criteria on 12 years, but seen the low participation of the Albanians to the police service prior to the 2001 conflict, Albanian leaders argued that so high standards are discriminatory.

heads of single departments and seen the territorial concentration of the ethnic groups, the horizontal conflict between the different levels of power in Macedonia's case assumed the characteristics of an inter-ethnic and inter-party conflict resulting in the prevalence of the political/ethnic rather than professional/efficiency/functionality concerns in the decision-making process.

After a few months of fierce discussion in the parliament and protest of the DUI members, the president of the assembly, pressed by the deadline settled by the EU, put the law to vote despite the DUI's protest and lack of large consensus to the proposal. As the compromise was reached between the ruling VMRO and SDSM, the solutions proposed in the legislation represented a compromise that satisfied some of the requirements of all parties. The eight police sectors were to be established (by request of SDSM, no police sector in Struga, a city with Albanian majority in the south-western Macedonia), whose heads are to be appointed by the Ministry of Inner Affairs. The criteria for the election of the candidates for the heads of the police sectors and for the commanders of the police stations were lowered to 6 years of experience (as required by Albanian parties). A significant part of the legislation was dedicated to the regulations of the work of the police with the goal to improve the human rights protection and limit the use of power. The use of informative talks, an issue of great concern due to frequent abuse of unclear rules, was finally regulated. The law was considered a necessary step in the process of EU integrations, which is reflected in the statements of the government and media and the timing of its adoption.

During 2007 the reform proceeded mainly with preparations for implementation of the Law on Police. The side-legislation was prepared and adopted, including the new police code and the action plan for its implementation (as envisaged by the Law on Police and in the national strategy). However, the (lack of) solutions concerning the resources management, budgetary planning, and the mechanisms of oversight remained a main weakness. The Law on Police prescribed these issues to be solved with the internal documents of the ministry. The ministry did adopt the necessary documents, but the solutions offered were not in line with the European standards[528]. The most important criticism concerned the failure to establish an independent control over the police service's functioning, where the only channels of responsibility remained the hierarchical/political ones within the ministry[529]. During 2006 and

[528] See EU and OSCE reports on Macedonia.

[529] From the interview with Buttini, the police advisor in the EU commission delegation to Skopje, August 2008.

2007, a series of politically inspired changes in the personnel involving not only the heads of the police stations, but, according to media, even the lowest-level employees offered an illustration of the channels of political influence within the service[530]. The politicization of the appointees in the Ministry of Interior (and generally in the whole system) was identified by the EU representatives as the main source of concern: "Not only are the professionalism and efficiency hampered by such practice, but, even more seriously, this raises the costs of the reforms. Together with other international partners we invested time and money to train people, and now they are fired due to political affiliations, and new people, lacking experience and training, came"[531]. Moreover, the DUI's dissatisfaction with the content, and even more, with the way in which the legislation was adopted, hampered the rule implementation as DUI refused to comply with the law. Not satisfied with the solution according to which the Ministry of Interior (and not, as required by them, the local mayor) shall propose the candidates for the local head of police unit (to be further appointed by the community's council), the heads of police station were not approved by the council in the 16 communities that were under DUI's control. This postponed the implementation of the law until mid-2008, when the process was finally accomplished. The unofficial pre-electoral deal made between VMRO and DUI[532] settled things down, allowing the whole process to be finally brought to an end, and even winning the government the appraisal for reaching the consensus with the opposition.

The efforts to foster the reforms and, in particular, to help the decentralization of the police service, were supported with the budgetary means of the Ministry of Interior, in constant growth since 2004, where we can account for a very significant growth (both in absolute terms and as a share in the state budget) in 2005 and 2008 budget (see Table 3).

16.2.3. EU and the Police Reform in Macedonia

Since the signature of OFA, the international actors were strongly pushing the restructuring of Macedonian police forces, seen their central role for the country's stability. The inter-ethnic relations, the fight with the organized crime, dismantling of the armed gangs

[530] See Utrinski, 02.02.2007.

[531] From the interview with Buttini, police advisor in the Eureopan Commission delegation to Skopje, August, 2008.

[532] For the "May agreement" see the part on the constitution. It appears that even the current governmental coalition between the VMRO and DUI might well be settled prior to the elections held in 2008, indicating the possible existence of an unofficial channel of negotiations and deal-settling prior to the creation of the coalition in July 2008. On the "March agreement" between the VMRO and DUI see also Gaber Damjanovska and Jovevska, 2007.

and paramilitary structures, all these issues were at the stake in the extremely difficult process of reforming the police.

The first efforts were concentrated in ensuring the state control over the entire territory, where the dismantling of the paramilitary forces and the implementation of the OFA (and of the related articles on the police) were the core aspects.

With the introduction of the Accession/European partnerships, and the reaching of a certain level of the stability in the country, the record of the recommendations and priorities became more detailed, tackling the questions of human rights and accountability as well (see the table in the appendix).

An important instrument of the EU's influence in the field of the police service reform was the mission Proxima, active in Macedonia since 2004, that through twining projects gave a substantial support in the fields of training and police reform. Thus, the police reform was realized in cooperation and with technical counseling by the EU experts, while substantial financial and technical support was given to the newly formed police academy. EU financial resources dedicated to the reform of the police in 2005 and 2006 represented about 20% of the total EU funds allocated to Macedonia in these two years, showing the salience of the police reform (see the tables in the Appendix).

Other actors involved in the reform were the OSCE and Council of Europe. Since the OFA signature, OSCE was given the role to promote the inter-ethnic confidence building, which, among other, meant the assistance to the development of the community policing and help to develop a multi-ethnic police. The Council of Europe was particularly active in monitoring the respect for human rights and in strengthening the safeguards against police's power abuse. The compliance with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed and ratified by Macedonia in 1997, was monitored and the necessary measures were recommended. The compliance with the measures recommended by the European Committee for Prevention of Torture (CPT) became one of the requirements of the EU as well. The EU support for the CoE and CPT agenda was decisive for ensuring the compliance as the improvements were registered only after the 2004, when the EU's pressures for the police reform (and, among other, compliance with the convention) were strengthened.

16.2.4. The Reform of the Police: Assessment

As we could see, the police reform in Macedonia represented a key issue for a series of reforms in other areas (fight against organized crime in particular) and a key for the country's fragile stability. The presence of armed groupings, militant ethnic minority, organized crime groupings (some of which ethnically homogeneous and connected with the militant ethnic extremists), high animosity between the ethnic groups and the political elite incline to (ab)use the nationalistic rhetorics, all this contributed to a situation where the police reform became an extremely delicate issue.

The international actors' involvement in the process was therefore crucial, as they engaged in mediations between the ethnic groups and represented a guarantee that the commitments made would be respected. Combined with the financial/technical assistance and the conditionality, these efforts of the international actors successfully pushed the reforms ahead.

As far as the domestic level variables are concerned, we should distinguish between the issues concerning inter-ethnic relations and those that were not a subject to the strong inter-ethnic conflict. The two groups were subject to different logics on the domestic levels, with different responses to the internationally promoted norms. The issues concerning the inter-ethnic relations found the strong domestic change agents between Macedonians and Albanians, the first fearful for the country's future, the second pushing the requirements for the decentralization of the police forces and the equal representation of the minorities forwards. However, as none of these institutionally strong actors is fully democratic-devoted and as their interests and preferences in the police reform are modeled with values other than democracy, issues like the respect of human rights and the independent control of the law enforcement agencies, the de-politicization or fight against corruption were promoted only by the actors from the civil society, far weaker and without any decision-making powers. Consequentially, the few improvements achieved in these areas represented the response to the external pressure.

16.3. A Comparative Assessment

As the two analyzed countries faced different problems in their police sectors, the reform paths significantly differ. The common characteristics, politicization, the war experience and militarization, the presence of paramilitary groups were combined with the particularities of

the two countries that have mainly influenced the course of the reforms. The international pressures for the reform of the police were far stronger in Macedonia than in Serbia, while, on the domestic level, the two countries again score significant differences, the presence of the Albanian ethnic minority in Macedonia representing a strong domestic change agent pushing for the rule adoption from within, bringing to better compliance. Yet, the prevalence of the security concerns on the level of the international actor and the bargaining based on the inter-ethnic conflict significantly influenced the content of the adopted rules. The decentralization of police thus represented a clear consequence of the ethnic power-sharing approach to the inter-ethnic relations to Macedonia. Similarly, the failure to comply also with those parts of the internationally promoted norms that did not concern the inter-ethnic relations (the accountability, politicization or respect for human rights) also testifies on how the dynamic of the rule adoption influences the content of the adopted rules.

In Serbia the development in this area produced similar results as in other fields of policy, the reform being only limited and failing to face the problems of the politicization and the accountability of the police forces. The relatively low external pressures were combined with the reform mainly guided by domestic inputs (transition, political struggle for the control of BIA, the assassination of the Prime Minister by the security forces' member). As a consequence, the solution mainly reflected the ruling elite's short terms preferences. The clearest example was the Law on BIA, where the rule adoption was dictated by the inner struggle for control over the intelligence service, the strong executive's control and absence of the parliamentary influence over the intelligence agency being the result. The timing of the police reform (2005 -) also matches a period of rather high level of political certainty, when the characteristics of the party system (polarized pluralism) appeared to significantly favor the central actor in the system (DSS), whose level of electoral uncertainty was very low. The failure of the police reform to face the issues of politicization and accountability is in line with the hypothesis that too-stable settings hamper the reforms that are aiming to limit the power or to introduce mechanisms of inter-institutional accountability, as the central actor, certain to remain in power and thus withdrawn from the scrutiny of the electoral accountability, is not induced to introduce mechanisms of horizontal accountability neither.

For one reason or another, the weaknesses that we identified in the two countries, politicization and the lack of accountability mechanisms, persist, representing the main threat

to the protection of the human rights, law enforcement and efficient struggle against the organized crime and corruption.

APPENDIX

Table 1: "EU priorities and the police reform in Macedonia."

2002	Dismantle of those legalized police forces which still display the behavior of paramilitary forces; Strengthen the fight against all violations of human rights and intensify training on human rights issues for law enforcement officials in co-operation with international organizations.
2003	Pursue key reforms in the security sector, in particular in the police, to ensure a professional, modern and well-trained service, of multi-ethnic composition, trusted by the community, and able to re-establish law and order throughout the territory. Complete the dismantling of the police forces which display paramilitary behavior. Strengthen the fight against all violations of human rights and intensify training on human rights issues for law enforcement officials, in co-operation with international organizations.
2004	**Short-term priorities:** Ensure that the police services, in particular the special police forces, behave according to international standards and practices. Clarify the respective roles of the Ministry of Interior and the Ministry of Defense in crisis management situations in line with EU practices. Adopt and implement an Action Plan for the reform of the police, taking into consideration equitable representation at all levels, and plan the necessary resources for its implementation. Take urgent measures to reform human resources management. Improve cooperation with the Judiciary. Enhance training capacities and ensure the proper functioning of the Police Academy, including the proper allocation of budgetary resources. Reduce corruption and irregular behavior within police ranks. Promote cooperation with Interpol and other international law enforcement organization, in particular through improved consultation of their databases.
2006	Key short-term priorities: Adopt the Law on Police. **Short-term priorities:** Continue to implement the action plan for the reform of the police. Provide adequate funding and training. Strengthen coordination and cooperation both among police bodies and between the police and other law enforcement agencies. Develop and implement a comprehensive human resources and training strategy for the police. Upgrade the equipment, particularly in specialized fields of investigation.
2007	**Key short-term priorities:** Ensure effective implementation of the Law on Police. **Short-term priorities:** Provide adequate funding and training for implementation of the police reform, strengthen coordination and cooperation both among police bodies and between the police and other law enforcement agencies and strengthen cooperation between the criminal police and the public prosecutors. Develop and implement a comprehensive human resources and training strategy for the police and upgrade their equipment.
2008	**Key short-term priorities:** Ensure effective implementation of the Law on Police. **Short-term priorities:** Provide adequate funding and training for implementation of the police reform, strengthen coordination and cooperation both among police bodies and between the police and other law enforcement agencies and strengthen cooperation between the criminal police and the public prosecutors. Develop and implement a comprehensive human resources and training strategy for the police and upgrade their equipment.

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, accession partnership with Macedonia, author's elaboration.

Table 2: "EU priorities and the police reform in Serbia".

2002	Reform of the security and police services should continue, transforming them into a service, adopting the Council of Europe's police code of ethics, bringing them under clear internal and external control and improving coordination between the various services and with other state services.
2003	Continued legislative reform and implementation concerning the security and police services, reducing their size and transforming them into a public service under clear internal and external control and accountability, with improved co – ordination between these and other start services, adopting the CoE police code of ethics.
2004	Short-term priorities: adopt Law on Police in order to improve professionalism and accountability. Implement a revision of the laws on the organization of the judiciary (Law on Courts, Law on Judges, Law on Prosecutors, and Law on High Judicial Council) and on criminal legislation (Criminal Procedure Code, Criminal Code and Law on Enforcement of Criminal Sanctions), as provided for in the protocol on cooperation with the Council of Europe. Medium term priorities *Continue restructuring the police*: ensure accountability; reform police education; ensure cooperation among law enforcement agencies.
2006	Short-term priorities: Implement the Law on Police in order to establish professionalism and accountability.
2007	Short-term priorities: Ensure full implementation of the Law on Police in order to establish professionalism and accountability, improve transparency, develop a modern police force free from undue political interference and increase capacity by means of specialized training. Take necessary steps to conclude a cooperation agreement with Europol.
2008	Short-term priorities: Ensure full implementation of the Law on Police in order to establish professionalism and accountability, improve transparency, develop a modern police force free from undue political interference and increase capacity by means of specialized training. Take necessary steps to conclude a cooperation agreement with Europol.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia, author's elaboration.

Table 3: "EU financial assistance to the police reform in Macedonia".

Year	Amount	Program	
2000	0.5	Support for the police academy.	
2001	1.5	Police reform.	
2003	2 mil	Police reform. Renovation of the police academy.	
2004	7.7 mil	Twinning- technical assistance to the police academy. Twinning technical assistance to the police reform. Development of police evidence management and forensic analysis capacity.	
2005	5.8	Grant – Local level police reform.	**Conditionalities:** It is imperative that there is a continued political will on the part of the national authorities to support implementation of the Police Reform strategy and that the Government allocates sufficient resources for this purpose.
2006	2 mil	Equipment supply to Rapid development unit.	
2007	9 mil	Support to the implementation of the Police Reform Strategy.	**Conditionalities:** Endorsement by all key stakeholders of the Terms of Reference, specifications for the individual contracts to be engaged; 2) Appointment of counterpart personnel by the beneficiary before the launch of the tender process; 3) Allocation of working space and facilities by the beneficiary for technical assistance before the launch of the tender process; 4) Arrangement by the beneficiary of all legal procedures to allow construction (e.g. construction permits, urban plan amendments), refurbishment activities before the launch of the tender process; 5) Participation by the beneficiary in the tender process as per EU regulations; 6) Organization, selection and appointment of members of working groups, steering and coordination committees, seminars by the beneficiary as per work plan of the project; 7) Appointing the relevant staff by the beneficiaries to participate in training activities as per work plan; In the event that conditionalities are not met, suspension or cancellation of projects will be considered.

Source: European Agency for reconstruction report 2006, IPE documents 2007, author's elaboration.

Table 4: "EU financial assistance to the police reform in Serbia".

Year	Amount	Program	
2003	12 millions	Support to the Law Enforcement Agencies in Serbia (enhance and modernize the professional capacities and capabilities of departments within the police force).	**Conditionality** (2002-2004) The relevant federal and entity Ministries/Departments will introduce and monitor control measures and safeguards to sustain the process in a transparent manner in line with the Stabilization and Association process. The relevant federal and entity Ministries/Departments will continue their efforts to work out a scheme for appropriate remuneration of its police and judicial service in the framework of the Government's Public Administration Reform Program. The Ministries/Departments will continue their efforts to reduce the turnover of personnel. The entities will demonstrate visible and tangible cooperation amongst themselves. And with the federal level whilst undertaking the necessary reforms and in their daily work. A proper maintenance and service of the equipment already provided or to be provided needs to be done and demonstrated. In parallel with the international assistance programs the Government will gradually allocate more money from the national budget to sustain the progress from its own resource.
2004	1 million	Supply of equipment to the Forensic Unit within Serbian Criminal Police / support to action-oriented measures in the field of organized crime.	
2005	6.5 millions	Capacity Building and strengthening the capacities of the Organized Crime Directorate in the MoI.	**Conditionality**: The beneficiaries must agree to commit the necessary resources to realize project objectives prior to launch of activities. The MOI must develop an Integrated Border Management Strategy consistent with EU guidelines. The OCD must have legally based checks and balances, with regard to special investigative measures, that allow a proper balance between the police/OCD's need to investigate organized crime activities and simultaneously protect the privacy of citizens not under justified investigation
2006	4.5 millions	Support to Juvenile Detention Centre Support to implementation of Criminal Sanctions Twinning: Implementation of IBM strategy Twinning: Capacity Building, Bureau for International Cooperation.	**Conditionality:** Funding of all proposed programs is conditional upon the signing of an Implementation Agreement with the main project partners clearly outlining roles and responsibilities. Each of the project partners will be required to implement the necessary institutional arrangements ensuring a smooth implementation of the proposed projects. Outstanding issues, particularly support to the computerization of the court system under the 2004 program, should be addressed before program support begins.
2007	1 million	Assist Serbian Police force in meeting EU standards of professionalism and conduct.	**Conditionality:** The Internal Section must be ready to commit the necessary time and resources to maximize the benefits of the Twinning contract. Project implemented through a Twinning requires full commitment and participation of the senior management of the beneficiary institution. - In addition to providing the Twinning partner with adequate staff and other resources to effectively operate, the senior management must be fully involved in the development and implementation of the policies and institutional change required to deliver the project results - Implementation of the project is also conditioned upon involvement and commitment of the stakeholders towards fulfillment of the project objectives. - Special efforts shall be made to ensure minority groups are fully included in project initiatives and benefit from project results. This includes a) giving special attention to importance to minority groups, and b) ensuring gender equality mechanisms.

Source: European Agency for reconstruction report 2006, IPE documents 2007, author's elaboration.

Table 5: "The budget of the Ministry of Interior in Serbia".

Year	Ministry of Interior	Budget	Ministry of Interior, share in budget
2002	20.656.000.000	217.379.629.540	9. 5%
2003	23.887.954.000	318.691.919.000	7. 4%
2004	27.809.068.000	362.045.252.000	7. 7%
2005	28.433.768.000	429.764.926.000	6. 6%
2006	33.917.228.000	548.405.821.000	6. 2%
2007	41.454.312.000	646.466.666.100	6. 4%
2008	41.604.344.000	611.866.849.862	6.8%

Source of data: Law on State Budget 2002. 2003, 2004, 2005, 2006, 2007, 2008, Službeni List Republike Srbije, author's elaboration.

Table 6: „The budget of the Ministry of Interior in Macedonia".

Year	MIA budget	State budget	MIA share in state budget
2002	5.160.965.000	71.700.273.000	7.198%
2003	5.635.972.000	67.490.170.000	8.35%
2004	5.677.838.000	66.666.000.000	8.517%
2005	6.255.784.000	66.538.469.000	9.40%
2006	6.914.018.000	81.749.000.000	8.457%
2007	6.890.753.000	79.522.497.000	8.665%
2008	8.097.000.000	89.397.520.000	9.057%

Source of data: Law on State Budget 2002. 2003, 2004, 2005, 2006, 2007, 2008, Sluzbeni Vesnik na Republika Makedonia, author's elaboration.

Table 7: "The police reform in Macedonia, external factors" (author's elaboration).

	Issues concerning the equal representation and decentralization of police service.	Issues concerning the human rights protection and accountability.
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	Yes (the adoption of OFA, the amnesty were conditioned by the donor's conference, the Law on Police was conditioned with the negotiating status.	Partially (the Law on Police... Difficult to assess in which measure the conditionality was considering the issues of the human rights rather than the more "difficult" issues of inter-ethnic relations.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	Yes (the law on the police).	Yes (the law on the police).
Was the issue part of the EU ***key*** short-term priorities?	Yes.	Yes.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	Yes.	Yes.
Amount of the EU financial support to the reform in general:	28,5	28,5 (the same resources).
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	9, 25%	9.25%
Reform perceived by the IA as:	Necessary step in peace building.	Necessary for the democratization of the country.
The main concern guiding IA's intervention in the field:	Security.	Security.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X	X
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.
Were the recommendations made by the IA accepted?	Mainly.	Partially (mainly avoiding).
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	X	Yes.
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	X	X

Table 8: "The police reform in Serbia, external factors" (author's elaboration).

	2001-2003	2004-
Was rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, access to the funds?	No.	No.
Did the rule adoption take place in the period immediately prior/after the important steps in the integration process took place?	X	X
Was the issue part of the EU ***key*** short-term priorities?	No.	No.
Was the issue part of the EU short-term priorities or among the priorities needing attention in the SAA reports?	Yes.	Yes.
Was CARDS financial support to the process conditioned by the adoption of the laws?	No.	Yes.
Amount of the EU financial support to the reform in general:	-	25 mill (2003 - 2007).
Share of resources dedicated to promote reform in the sector in the whole of EU assistance to the country:	0,00%	1.93%
Reform perceived by the IA as:	Part of the democratization process and fight against organized crime in the EU as well.	Part of the democratization process and fight against organized crime in the EU as well.
The main concern guiding IA's intervention in the field:	Democratization/security.	Democratization/security.
In promoting the norm, did the IA tolerate undemocratic behavior and abuse of power by the domestic stakeholders?	X	X
Was consulting, advice, technical support of external experts made available, and was it used in the law drafting?	Yes.	Yes.
Were the recommendations made by the IA accepted?	Mainly.	Partially.
Were the reports and analysis of the international organizations successfully used to delegitimize the status quo in the country? Were the domestic actors vulnerable to external criticisms?	No.	No.
In publicizing the adoption of the law, was the government underlining its compliance with the international norms, or was it seeking the external legitimization of the law in other ways?	-	Yes.

Table 9: "The police reform in Macedonia, domestic factors" (author's elaboration).

	Issues concerning the equal representation and decentralization of police service:	Issues concerning the human rights protection and accountability:
Domestic input for the change:	Present (OFA).	Absent.
Domestic actors pushing for the reform:	Present, strong (Albanian ethnic community).	Present, weak (civil society).
Level of conflictuality of the issue:	High.	Low.
Type of the conflict and main line of the conflict:	Inter-ethnic, inter-party.	Rulers vs. Ruled.
Did the issue concern the deep divisions in society?	Yes.	No.
Type of the issue (salience - positional):	Positional.	Salience.
The main beneficiaries of the status quo:	Macedonian majority.	Ruling elite.
The main beneficiaries of the change:	Albanian ethnic minority.	Citizens.
Is the existing status quo strongly delegitimized by all relevant actors?	X	X
Two or more alternative solutions present?	X	X
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.	Fluid.

Table 10: "The police reform in Serbia, domestic factors" (author's elaboration).

	2001-2003	2004-
Domestic input for the change:	Regime change.	Assassination of PM.
Domestic actors pushing for the reform:	New ruling elite.	Ruling elite.
Level of conflictuality of the issue:	High.	Mid.
Type of the conflict and main line of the conflict:	New vs. old elite, intra-party, political conflict.	X
Did the issue concern the deep divisions in society?	Partially (problem of continuity - discontinuity).	X
Type of the issue (salience - positional):	X	X
The main beneficiaries of the status quo:	Ruling elite.	Ruling elite.
The main beneficiaries of the change:	Citizens.	Citizens.
Is the existing status quo strongly delegitimized by all relevant actors?	Yes.	Yes.
Two or more alternative solutions present?	No.	No.
Political fluidity/stability (in terms of the perspective of power of the central actors)	Fluid.	Stable.

Table 11: "The police reform in Macedonia, outcomes" (author's elaboration).

	Issues concerning the equal representation and decentralization of police service	Issues concerning the human rights protection and accountability
The procedure of law drafting:	Away from the public debate.	Away from the public debate.
The main deficiency in the adopted legislation:	-	Failure to establish the mechanisms of the control. Persistence of the politicization.
The main beneficiaries of such deficiencies:	-	Ruling elite.
The status (2008):	Rule adopted. Implementation ongoing.	Rule adopted, implementation obstructed.
The EU comment in the 2008 report:	The decentralization element of the police reform strategy has been implemented. All the implementing legislation has been adopted, and the necessary organizational arrangements were made by the Ministry of the Interior to prepare for effective implementation of the Police Law.	The Ombudsman regretted the lack of effective control over special police units, notably the Alpha units. The prosecutor's office should make further significant efforts to promptly and in an independent manner investigate and prosecute allegations of ill treatment. There are increasing calls for an independent, external mechanism for monitoring of police misconduct to be established.

Table 12: "The police reform in Serbia, outcomes" (author's elaboration).

	2001-2003	2004-
The procedure of law drafting:		
The main deficiency in the adopted legislation:	Approach concentrated on the individual integrity rather than on the systemic reform. Failure to ensure the parliamentary control over the intelligence agency.	Failure to ensure for the independent mechanisms of external control, still persistent politicization.
The main beneficiaries of such deficiencies:	Ruling elite.	Ruling elite.
The status (2008):	-	Rule adopted, implementation.
The EU comment in the 2008 report:		Progress in the area of police and policing has been limited. However, structural problems in the police forces persist. In the absence of new legislation concerning the division of responsibilities, there is a lack of coordination. The internal control department has not been sufficiently effective owing to limited support within the police, staff shortages and a lack of resources. Concerns remain over the level of transparency in police work and potential undue political influence. Overall, Serbia is moderately advanced in the area of policing.

17. ECONOMIC ISSUES

The creation of the linkages with the EU, beside the political requirements, also has its economic dimension producing a series of costs and benefits for the domestic economic and political elite. In this section we will try to ponder on the possibility for the economic ties to serve as a mean of supporting the process of democratization and we will assess the structure of incentives for compliance/integration deriving from the creation of the economic ties and financial incentives of the EU.

The belief that the EU integrations would foster the economic development often represents one of the key motives inducing countries to seek the EU membership. The expected benefits are many-fold, from access to the EU internal market of goods, capital and labour and access to EU funds, to the belief that the EU membership, a guarantee for the country's political stability and security, would attract foreign direct investments into the domestic economy. Finally, as Vachudova stresses, the dependence of the South-East European countries on the trade with EU increased the vulnerability of these states to the effects of the EU market regulations. Following the logic described by Hurrell, according to whom "the more prepared the dominant power is to accept a rule-constrained hegemonic order, the more acceptable is a strategy of band-wagoning for the weaker states" (Hurrell, 1995, p. 343, cited in Vachudova, 2001, p. 8), the countries depending on the EU trade are strongly motivated to seek for integration. This is particularly true for both Macedonia and Serbia in the context of the last EU enlargements after which the Balkan states found themselves being isolated islands surrounded by the EU. As for both countries the markets of the Central-Eastern Europe were crucial trade partners, the entrance of the Eastern European countries, and, in particular, the entrance of Bulgaria and Romania in the EU, significantly increased the share of the trade with EU in both Serbia and Macedonia (if we compare the share of the EU trade with Serbia and Macedonia for EU15, EU25 and EU27, we can notice the significant increase of the dependence on the trade with EU for both countries after the last enlargement in 2007. See Tab.1 and 2). Further on, seen that for both Macedonia and Serbia the main trade-partners other than EU are the other Balkan countries, the possible

entrance in the EU family of any of the candidates or potential candidates countries would further increase the trade dependence on the EU. What Vachudova underlined in 2001 becomes even more important for the current candidate and potential candidate countries: those excluded would bear the huge costs deriving both from the missed opportunity and from the increased EU influence and strength.

Table 1: "Serbia's trade with the EU in 2002, share in total import and export".

	Share in total import	Share in total export
EU 15	40%	42%
EU 25	55.2%	51.8%
EU 27	59.6%	59.6%

Source: Statistical annex of the SAA report for Serbia 2004, 2006 and 2007, author's elaboration.

Table 2: "Macedonia's trade with the EU in 2002, share in total import and export".

	Share in total import	Share in total export
EU 15	44.9%	51.1%
EU 25	54.7%	53.9%
EU 27	61.7	55.9%

Source: Statistical annex of the SAA report for Macedonia 2004, 2006 and 2007, author's elaboration.

To the consideration of the costs and benefits that a single country gets from the integration in the EU, we should add the consideration of the costs and benefits that the EU integrations have for the domestic economic elite. The interests of the particular economic actors are not necessarily identical to what is the "national", overall interest in the process of the economic integrations. The example of Serbia is very important in this sense: while the further liberalization of trade and increased competitiveness of the market would surely favour the citizens of Serbia (whose costs of life are similar to those in the more developed countries of the EU but with far lower wages), Serbian monopolists (see the next section) would endure significant costs from losing the control over the internal market. The political and economic integrations in the EU might have important re-distributive effects not only on an inter-state level, but *also* within a single state[533]. It would be therefore erroneous to assume that the linkage incentives offered by the international actors are always positively assessed by the domestic actors. In the context of the state capture and strong business' influence on the

[533] See Koutsiaras, 2006.

decision-making process, the interests of the economic actors in the field of the foreign policy become a crucial factor in shaping the dynamics and the exit of the process of the EU integrations, and, thus, the exit of the development of the EU anchors of domestic democracy.

The interests of the economic actors are one of the important factors influencing the democratization process as well. In the cases of the international anchoring of democracy, a process characterized by the interception of two otherwise distinct processes (the foreign policy choices and the change of the domestic political regime), the interests of the economic elite in foreign policy are combined with their interests in the process of the regime change. The importance of this linkage is the core of many studies of the international dimension of democratization that start with the belief that by offering economic incentives in the shape of foreign trade or integration into the International Organizations, the international actors can induce the skeptical domestic economic elite to accept the domestic regime change. Thus Whitehead, when analyzing the democratization process in Southern Europe, underlined the important role of the EC, showing how the presence of the supranational organizations is capable to favor the democratization as it can offer external guarantees for the property rights of the economic elite, this way settling their fear of transition (Whitehead, 1996). In these cases it was precisely the boundary removal and the perspective of European integration to induce the economic elite to accept the regime change and support the democratization (Whitehead, 1996), an acceptance that, according to Morlino (1998), is the necessary condition for democratic consolidation.

The role of the economic elite in the theoretical framework of the international anchoring is particularly interesting if we consider the effects that the process of the EU integration can produce for the already existing domestic anchors of democracy (Morlino, 1998. We will further explore this argument in the conclusive chapters). With its deep implications for both economy and the political regime, the norms promoted by the EU can strongly influence the pre-existing equilibrium in the country. The international actor's action can thus strengthen the existing patterns of linkage between the political and economic elite, or it might disturb the balance between the domestic actors, and for what is the core interest of this section, between the economic and political elite. The domestic, pre-existing anchors of the democratization might therefore be strengthened by the international influence (strengthening

the established regime but not necessarily increasing the quality of the established democracy), or they might be harmed, causing an internal crisis.

For these reasons in the following sections we will concentrate on the domestic elite's interest in the fields of EU integration and process of democratization. As the space of this work does not allow a detailed analysis of the economic elite's interests, which would require a new research, we will concentrate on the course of the economic reforms in the two countries, paying particular attention to the process and context in which the birth of economic elite took place, to the privatization process and the analysis of the business-politics relationship. A series of studies on the political and economic transition in the post-communist countries underlined the importance this first period of reforms had for the opportunity structure the political and economic elite would face in both further reforms and EU integrations. As Vachudova underlined, one of the important factors in assessing the country's approach to the EU integrations concerns the beginnings of the transition to democracy and market economy, the distribution of forces between the old and new political elite and the timing of economic reforms[534]. Kitschelt and Maleski also underlined Fish's finding, according to which "the immediate aftermath of the communist collapse makes the greatest difference for the development of economic reform in the entire hemisphere" (Fish 1998, in Kitschelt and Maleski, 2000, p.9). Hellman's analysis brought in light the particularity of the economic transition in the former communist countries where it was the net winners from the early phases of transition to obstruct the further reforms[535], while Walder (2003) underlined the importance of the opportunity structure the former communist elite meet at the first years of transition for understanding the pattern the transition followed. Finally, Bruszt (2002) makes a strong argument on the link between the state making and market making, where the level of the accountability and the representation of interests as build in the constitutional designs

[534] See Vachudova 2001.

[535] Thus, Hellman underlines: "The most common obstacles to the progress of economic reform in post-communist transitions have come from very different sources: from enterprise insiders who have become new owners only to strip their firms' assets; from commercial bankers who have opposed macroeconomic stabilization to preserve their enormously profitable arbitrage opportunities in distorted financial markets; from local officials who have prevented market entry into their regions to protect their share of local monopoly rents; and from so-called Mafiosi who have undermined the creation of a stable legal foundation for the market economy. These actors can hardly be classified as short-term net losers in the overall reform process. On the contrary, they were its earliest and biggest winners. These net winners did not oppose the initiation of the reform process, nor have they sought a full-scale reversal of reform. Instead, they have frequently attempted to block specific advances in the reform process that threaten to eliminate the special advantages and market distortions upon which their own early reform gains were based. Instead of forming a constituency in support of advancing reforms, the short-term winners have often sought to stall the economy in a partial reform equilibrium that generates concentrated rents for themselves, while imposing high costs on the rest of society" Hellman, 1998, p. 204.

influenced the emerging economic elite's capacity to capture the state and the market, obstructing the process of market building.

The economic and political reforms in the post-communist Europe appeared to go together, as many researchers have illustrated. The causal link between the two, however, remains disputable. As Gould underlined, "while privatization is endogenous to legacies in authoritarian and liberal democracies, this causal direction might reverse itself in illiberal democracies. Weaker democratic institutions will provide insiders with an edge, but as state assets come into play, so too will democratic institutions. Conflict surrounding privatization could thus contribute to democratic backsliding and regime instability" (Gould, 2003, p. 287). All this induces us to believe that the context that shaped the early development of the market economy would be a key for understanding the path the economic transition followed in these two countries, and the preferences of the economic actors in the democratization of Serbia and Macedonia. In an effort to reconstruct the interest of Serbian and Macedonian economic elite, we will therefore use these theoretical models as a guide in exploring the incentives the particular assets produced on the business elite's structure of opportunities.

17.1. Serbia

17.1.1. The Birth of Serbian Tycoons: Economic Transition in the Context of Authoritarian Regime and International Isolation

Unlike other central-European countries, Serbia's post-communist economy was developed in a climate of international isolation, by an authoritarian regime and in a war-shaken society where corruption, grey economy and organized crime were tightly linked to the central authorities. The rising of an economic elite with capitals of dubious origins, used to playing by unfair rules, and a situation where a closed market was split among politicians and businessmen, controlling all legal and illegal flows, were its logical consequence[536]:

> "In Serbia and Croatia the ethnic conflicts have influenced the formation of the political elite, by serving as a powerful form of external legitimacy, by strengthening nationalism and by offering an efficient background for the imaginative financial embezzlement and the convergence between

[536] For the links between the political, economic elite and organized crime in Serbia and Croatia, see Rotta, 2003. On the link between nationalism, organized crime and corruption and on the influence the international isolation has on the development of such links, see Kemp, 2003. On the links between Serbian elite (political and economic) and the organized crime during the '90s, see the report of the Southeast European Legal Development Initiative, "Anti corruption in southeast Europe: first steps and policies", on the difficulties and costs of the integration with EU rising from the existence of the economic elite linked with the nationalist pattern governments, see Vachudova, 2003.

> the state, politics and criminality. After the changes that made the main protagonists of the '90s disappear, in both countries the legacies of the previous economic management represented a heavy burden on their road towards the reforms and European integration." (Rotta, 2003, p.5, translated by I.M.).

The market created under the isolation by the authoritarian elite was a closed market, regulated by a series of laws allowing not only the state's intervention, but also abuse and politicization of the public sector. In all sectors of economy centralization took place, and Milošević's "democratic government", officially devoted to the transition to market economy, used the ethnic conflict and the external sanctions as an excuse to centralize even those segments, like external trade, that were rather liberal in the period of the communistic regime[537]. This resulted in the creation of monopoly or monopoly-like positions, where people near to the regime and included in its corruption/criminal network were granted the exclusive rights to control the export/import flows, to open companies and to buy the state's property for ridiculously low prices in the few attempts to privatization that took place in that period.

The public sector, enormously large in Milošević's period (as the privatization did not take place until 1997, and even then with a very narrow range and only in those lines and modalities decided by the regime rather than by the market), was used on one side to ensure the political support of employees fearing unemployment, while on the other it represented a resource for side payment for the narrow elite and their supporters. The first ten years of "transition" in Serbia matched very well to the second type of transition described by Welder: the low extension of regime change combined with the delayed privatization and weak institutional framework. According to Walder, and as confirmed in the example of Serbia, such setting is characterized by the "assets conversion", rather than "assets appropriation":

> "The state agencies and public firms may engage in a form of asset conversion in which they transfer public assets to private entities that are under their own organizational control. These strategies permit state firms to evade state regulation and taxes by earning larger incomes off the books (Lin 2001). The proceeds may be used for a variety of purposes, including larger executive compensation (in salaries and fringe benefits) and potentially also the (corrupt) diversion of funds into private hands. In these cases, incumbent officials may extract larger incomes from such arrangements, but they do not assume ownership of these still-public assets. (…) In these regimes, private sector expansion occurs primarily outside the state economy, in agriculture and small-scale enterprise. (…) The old elites will tend to remain in their existing public posts, combining them, if possible, with new income-earning activities in emerging markets" (Walder, 2003, pp. 906-909).

This property "conversion" brought by the end of the '90s to a situation where even those few assets left after the decade of disastrous economic policy, war and sanctions, were

[537] The EBRD transition index in 1994 registered this phenomenon, diminishing Serbia's score on the dimension Foreign Trade from 2 to 1 point.

subverted by the regime in order to keep on filling the bank accounts of the managers[538]. We should underline that the effects of the assets conversion are even more devastating than the effects of the assets appropriation: as the elite "does not assume the ownership of the still-public asset, but it only expropriates its wealth, the managers are not interested in fostering the development of the business. This way not only the public property passes to the privates in an un-transparent, unlawful way, but due to the bad management many state companies were brought to bankruptcy, with disastrous effects for the state economy. In ten years (from '89 to '99) the GDP fell for more than 50%, GDP per capita slid down from nearly 3.000 USD to 1.200 USD, the import coverage by export dropped from 78% in the beginning of the '90s to 36% prior to the regime change, while the foreign debt, partially inherited from Tito's Yugoslavia, partially created in the nineties for sustaining the war economy, reached 12.5 billion USD and was almost equal to the GDP[539].

The economic system inherited from Milošević's regime was thus particularly unfavorable, as due to inadequate legislative framework, to the lack of rule of law, and to the general selective application of rules during the ancient regime, the mechanisms of economic functioning were all negative. The inefficient social and state property dominated over the private sector, and politics dominated over economy. The public business companies were transformed into institutions of partisan social assistance. The market was only partially liberalized, through the reductionist definition of a market embracing only the goods, and leaving money, currency, finances and labour market in a semi-legal position with prices dictated by the administration. The foreign trade was restricted, favoring only the regime supporters. Similarly, the access to state aid and subsidies, to finances, to foreign currency according to the official prices, all were preferential and dedicated to the narrow circles of the regime-supportive economic circles.

The regime change thus brought to an earthquake in the economic sphere as well. For Serbian businessmen, the costs from the transition were not limited to the loss of preferential treatment and of the political power. The shift in the foreign policy and the economic reforms were among the new elite's highest priorities, substantially changing the entire context in which the economy was functioning. Moreover, the fear of lustration and re-examination of

[538] See Mijatović, 2005.
[539] Data taken from Prokopijević, 2002.

the property's origins was also on the agenda, increasing the economic elite's concerns for the future[540].

In the initial stage of the transition the economic elite, fearing that the "revolutionary enthusiasm" could result in the questioning of their links with the previous regime, kept itself as far from the public attention as possible. Yet, as time passed, it paradoxically succeeded in establishing ties with the new political elite through the process of the disastrous implementation of the even more disastrous Law on "Extra Profit" (see Mijatović, 2005).

The so-called "Law on Extra Profit" (adopted in June 2001) represented a one-rate taxation aiming to compensate the re-distribution effects of the previous regime's economic policy. The profit gained in the last 12 years through "particularistic preferential treatments" was to be taxed. Even though the issue was opening a series of questions requiring in-depth investigation on the abuse of state goods and even criminal acts, the courts, prosecutors and the investigative bodies were all kept aside. The authority to examine the cases (and to decide what profits were realized due to such benefits and which companies should be taxed) was given to the ministry of finance and its administration, which were also in charge of taxing the profits. Due to the lack of investigative competencies of the bodies included in the implementation, most of the cases were successfully challenged in front of the Supreme Court. The law implementation not only failed to meet one of its primary goals (re-filling the state budget), but also harmed already bankrupted public companies for the gains realized and than expropriated by the managerial boards. The procedure prescribed for the implementation of this law represented a further incentive for the politicization of the economy and actually served as the mean to legalize illicit gains. It was in this moment that the business elite re-established the ties with the new political elite, ensuring to avoid too severe taxation, scapegoating already destroyed public sector companies and legitimizing the rest of the income as the illegal profits of dubious origins were "washed" by the payment of this particular fee[541]. The failure of the Ministry of Finance and its administration to tax the well-known companies that gained their wealth during -and due to their support to- the ancient regime (like for example Delta Holding, held by Serbia's richest businessmen Mišković,

[540] The calls for re-examination of the origins of the property was one of the most current issues in Serbian public opinion in the aftermath of Milošević's regime. See for example the articles in Glas Javnosti, http://arhiva.glas-javnosti.co.yu/arhiva/2000/11/19/srpski/D00111804.shtm or NIN, http://www.nin.co.yu/2001-01/11/16124.html . In 2003, the round table on the issue was organized by media center (see http://www.transparentnost.org.yu/ts_mediji/1408-s02.html).

[541] On the Law on extra profit, its implementation and effects, see Mijatović, 2005, Bisić, 2005, Prokopijević, 2002.

former member of Milošević's government who built his wealth during the '90s and, according to Wprost's list, one of the wealthiest persons of the post-communist countries excluding Russia) represented one of the most evident illustrations of the inadequacy of the rule implementation.

After this legitimization of their profits, the new-old economic elite, free from the burden of its past misdeeds, initiated the activities which are normal for any elite in the democratic settlement: lobbying. Their interest, consisting in preserving as much of the structure they were functioning in and maintaining their economic position in Serbian closed market as possible, was successfully pursued by their success in shaping Serbian economic policies. The lack of democratic institutions capable to ensure the transparency of the process of representation of interests brought to a situation where, more conveniently for both sides included in the process, lobbying assumed the shapes of corruption[542]. The lobbing activity of the old economic elite combined well not only with the political elite's personal interests, but also with the political parties' short-run political interests. The economic reforms are usually difficult to undertake due to the unpopular measures and the negative short-run effects they produce on the population. As a result, the ruling elite is not incentivized to pursue the reforms as, in the short-run, it brings to the loss of the electoral support. Moreover, in Serbia's case, a very large public sector under the control of the state represents a high incentive for what some authors labeled "state-capture". As the control over the public sector shifted from the hands of the "enemy" to the hands of the new elite, it became an important resource for the party's clientelistic payments to its members. As we will see, the so long-awaited privatization process therefore represented not only a source for filling the state's budget, but even more importantly, the control over the privatization was a good opportunity for quick personal enrichment through the corruption in the untransparent seizure of state assets.

The Law on Privatization was adopted soon after the change of government (June, 2001 with the by-laws adopted in the second half of 2001 and the beginning of the privatization in 2002. This time-line, according to some authors, was rather slow, seen that the law draft was already prepared in cooperation with the World Bank[543]). It represented a solution (according some authors, like Prokopijević, an inadequate one) that further centralized the process of privatization by giving the government's agency for privatization a significant influence on the process. The idea that the companies' management is much more successful in a situation of

[542] See Mijatović, 2005.
[543] See Prokopijevič, 2002, Mijatović, 2005.

concentrated capital, the belief that what is paid for is handled with more care than what was received through vouchers and, last but not least, the necessity to fill the state's budget resulted in the preferences for privatization through the selling to the strategic buyer, where the country gave 70% of the actions to one, best-offer buyer. The social peace and the costs of the privatization for the workers were thought to be faced by offering the remaining 30% of the actions to the workers and by requiring buyers to include in their offer also a plan of the investments and the social program, as well as to accept the very un-popular prohibition of dismissals in the first 3 years[544]. The method chosen for privatization was the one known and usually implied in the well-developed economies, and it presupposed wide openness of the market, a developed financial market and high levels of competition, conditions that were surely lacking in Serbia. The lack of such pre-conditions for successful privatization, according to some authors (Prokopijević, 2002, Janković, 2006), brought to the following consequences: 1) due to the fact of being carried out in conditions of close market, the procedure of privatization significantly favoured the domestic buyers (the economic elite inherited from the previous period); 2) due to the lack of transparent criteria for deciding the winner of the auction/tender (both the price offered and the social program proposed were to be examined), the bureaucratic arbitration prevailed; 3) and finally, due to the low levels of competitiveness of Serbian economy, the sale of enterprise actually turned into a sale of market-shares and monopoly as well. This last characteristic remained a hallmark of Serbia's privatization, as the anti-monopoly legislature pended for long periods and it is still not properly implemented. Moreover, as some authors noted, the monopoly on the market was not only produced by the domestic economic structures, but was also negotiated between the state and the buyers. In order to raise the privatization revenue by securing the monopolist position to the buyer , together with the asset and the share of the market, the state also guaranteed the adoption of the legislation that would create legal barriers for the possible entry in the field of the competitors, securing to the buyer the maintenance of the acquired market share (see Janković, 2006).

[544] This last provision was particularly demotivating due the inadequate structure of labour in the public companies. As during the '90s the public companies were perceived as a mean of solving the social problems of the SPS party members, most of the public companies were overcrowded, with inadequate organization schemes and staff that was not only lacking the professional skills, but also had very bad working habits summarized under the well-known slogan "you can never diminish my wage so much as I can diminish my efficiency". The prohibition to dismiss the workers, required by the ruling elite in order to maintain the social peace and in order to keep the unemployment rate from increasing, had a significant negative impact on the potential buyers and contributed to diminish the price of the assets.

In line with the protectionist economic policy of Serbian government, the approach the country adopted towards foreign direct investments also resulted in the failure to create a positive environment that would bring to an increase in the economy's competitiveness (see Popović, 2005). Even though the figures show an increase in the FDI in Serbia since 2001, the Greenfield investments are almost absent and the high levels of FDI in the last years are created by the acquisition rather than the initiation of new business. The international (and multinationals', see Kekić, 2005) pressure to privatize, combined with the internal need to dismantle the gross public sector, produced figures of intensive FDI in the last years, but this increase in investments did not bring to a significant increase of the export, neither to the creation of new jobs. Rather contrary, the trade deficit continued to grow, as did the unemployment. The lack of rule of law, the corruption, the negative political climate, the state intervention and protectionism policies, the complicated procedures, the closure of the market and difficult entries due to the obstructions in the administration, combined with the state-guaranteed monopoly, are among the main obstacles for business and investments in Serbia. Such a situation of low competitiveness and difficult entry is obviously in the interest of both the international and the domestic business elite that, seeking to protect their preferential treatments, continue to press the government to keep on the course of partial reforms.

The economic transition in Serbia registered a very positive push in all fields immediately after the change of the regime, to slow down after 2003-2004 (see Figure 3). Such pattern fits well into the Hellman's concept of the "partial reform" created as a product of the obstacles from the initial new-winners of the transition (Hellman, 1998). In Serbia's case we shall moreover recall that the inherited elite, the elite that dictated the reforms, the only elite capable to represent itself as the strategic buyers in the process of transition, was actually the same old economic elite inherited from the Nineties. For, as Walder stressed:

> "If an economy spends a significant period of time in circumstances that provide incumbent elites with large opportunities, by the time more complete reforms are put into place, old regime elites will already have seized available advantages. Subsequent reform does not turn back the clock: property appropriated and income accumulated will remain in the hands of those who possess them" (Walder, 2003, p. 913).

In the "the winner takes it all" style described by Hellman, this new-old economic elite, legitimized through the process that allowed them to create the links with the new political elite, continued to exercise its slowing effect on the reforms: as we can see from Figure 3 in the appendix, Serbian index of transition marks a significant growth in the first two years of transition, to slow down in the period that followed. While countries like Slovenia and Croatia

reached 3 points as the average of their indicator of transition in the first five years of reforms, in Serbia this was not achieved even after eight years. Similarly, much in line with Hellman's insight, the low competitiveness of Serbian political system in the period 2003-2008 and the security of tenure for Koštunica's staff guaranteed by the characteristics of the party system favored the slowing down of the economic reforms[545]. In a context where the economic stake holders have preferential access to the decision-making process, the winners of the transition have both the interest and the capacity to block further reforms, resulting in a "partial reform equilibrium that concentrates gains among the winners at a high social costs" (Hellman, 1998, p. 232). The dimension of the reforms that in Serbia suffered the most from this influence, and where the lobby was most interested and most successful in delaying the reforms, was the competition policy which remained at the same levels from 1989 until 2006, and even then, after strong international pressures, it only moderately improved by the introduction of nominal changes without real effects.

What is, then, this economic elite's interest in the process of democratization and European integration? The political requirements of the EU that call for more transparent and open policy making processes, the fight against corruption, the free and independent judiciary, the rule of law, would on one hand surely contribute to the improvement of the "environment for business", but on the other it would also take away the political protection the economic elite enjoys. The state's intervention in the market and economy, the lack of anti-monopoly legislation, the state aid and closed market, the lack of rule of law, the corruption and the lack of judiciary independence, all these shortcomings of Serbian democracy actually represent the

[545] "The slow reformers generally have political leaders with the longest and most secure tenures in the region. With the exception of Belarus and Ukraine, all of the slow reformers have been ruled continuously by the same respective presidents since the start of their transitions (…) The postcommunist countries with more frequent executive turnovers and shorter government tenures have generally been the most far-reaching economic reformers. Politicians with shorter expected time horizons have nevertheless been far more likely to adopt economic reforms. Those political leaders with the greatest security of tenure have tended to introduce partial economic reforms or have delayed reforms altogether, even though they would appear to have faced the weakest threat of electoral or popular challenge to more comprehensive reforms. Although this evidence cannot support a causal link between executive turnovers, government stability, and economic reform, it does challenge the notion that the threat of electoral revenge against the short-term costs of economic reform is a substantial ex ante obstacle to the adoption of reform in the post-communist transitions" (Hellman, 1998, p. 214). Bruszt further develops the argument and to the stability of tenures adds the level of the executive's accountability as a factor that influence the possibility of the economic elite to capture the state and the market: "In countries with high concentration of state power the probability is higher that powerful economic actors can use the state to redistribute wealth and opportunities to themselves both within the state and the market" (Bruszt, 2002, p.69). In Serbia the more secure tenure for the central actor of the political regime is combined with the complete lack of mechanisms of inter-institutional accountability (see the section on form of government and on judiciary and corruption).

mechanisms that this elite was (and it seems to continue) using for their own benefit[546]. The political reform would surely create a tidier and more certain environment, but this would award the competitors and the newcomers, not the existing economic elite whose interests are already pampered by the links with the political leaders, the judiciary and the state bureaucracy[547]. While the political requirements of the possible EU membership would indirectly put the system upon which the economic oligarchs are now basing their business at risk, the EU economic requirements would tackle their position on the market. The increase of the market and economic competitiveness, the opening up of the market, the control of the state aid, the strengthening of the anty-monopoly legislative framework, all these requirements are directly undermining the economic elite's interests. At the same time, due to the extremely unfavourable structure of Serbian export to the EU, in which the agricultural products and the unfinished goods and raw materials with the lower added value prevail, the interests in the integration of the economic elite, whose main resources come from the import monopolies and domestic trade, are still rather low.

The economic elite's interest in the EU integration appears to be one of the significant factors influencing Serbian foreign policy, mainly due to the linkages (corporatist and corruptive) going from the economic to the political elite. The court in Belgrade is currently investigating on the charges brought by LDP political party, according to which Serbian richest businessman, Mišković (owner of the Delta Company, accused of holding a monopolistic position over Serbian market[548]) offered his influence on the government's policy on Kosovo in exchange for a USA visa[549]. The charges were based upon a titled document by the USA embassy in which the offer and the analyses of Mišković's offer are confirmed. Even though the origin of the document is disputed, on Mišković's (and other

[546] We notice that the main destination of Serbia's companies investing abroad are Bosnia, Slovenia, Macedonia, Montenegro, USA, Russia (data of the National Bank of Serbia), where a large percentage (88%) was invested in countries that, among European countries, score high on the flows of corruption and lack of respect for the rule of law, which obviously do not appear to be *that* crucial in the calculation of the risk of Serbian investors (according to the transparency international corruption perception index: Serbia, Bosnia, Macedonia and Montenegro all score 3.3, Russia scores 2.3).

[547] For an analysis of the links between Serbian political leaders and the economic elite see Pešić, 2006.

[548] According to the findings of Serbian Commission for the protection of the concurrency, Mišković's company Delta controls more than 50% of the market in Belgrade. This result was questioned by the experts who, on behalf of Delta, undertook their own estimation according to which, due to the definition of the market differing from the one adopted by the state's Commission, Delta controls only about 30-40%. It is interesting to underline how the owner of the expert's company that made the assessment is the former vice-president of Serbia and former leader of G17plus. See http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=01&dd=04&nav_id=279204, also http://www.politika.rs/rubrike/Ekonomija/Labus-radi-za-Mishkovica.sr.html.

[549] Data from the news on the official site of LDP.

businessmen's) influence on Serbian political parties, beside the LDP, the anti-corruption council also issued documents confirming the existence of such links already pointed out by the domestic political analysts[550]. Finally, after the exit from SRS, Nikolić, former vice president of SRS, confirmed that Mišković financed his campaign for the presidential elections (see the section on corruption). In this light, the most recent effort of the richest and most controversial economic magnate to lobby for the "Serbian economy"'s interests in Brussels is a significant step marking the shift in the economic elite's interests. The comment of the British ambassador in Serbia in such occasion is an interesting illustration of the importance the economic elite's support for the integrations has:

> "I do not want to comment on the travel of Serbian businessmen in Brussels, which is a matter concerning him and Brussels, but generally, I see that the situation changed and that today there are many persons capable to give a positive contribution. These may be the persons involved in business, but not only. I believe that for many, politicians, businessmen or other, it is not so important what they have done in the past, but what they are trying to do now." (Source: B92, 20/10/2008).

Such effort of re-orientation in the business is surely influenced by the recent signature of SAA and increase of the domestic political support to the EU integrations, which had an important impact in the economic elite's calculation and strategies as the new realities are requiring the adaptation. As Vachudova stressed, "As candidates move forward in the process, governments are locked into a predictable course of policymaking that serves as an important signal to internal and external economic actors about the future business environment". In this light the opposition and obstruction of the ratification of the SAA in Serbia in the period march-September 2008 should be seen as an effort of the anti-EU forces to avoid this "locking in" and commitment the signature of SAA represented. As they failed (mainly due to the capacity of the EU to attract support from the former Milošević's party, SPS), the economic elite was induced to change its strategy and start to adapt to the new situation. It is however, far from creating a situation similar to that we meet in Macedonia (see below) where the economic elite's influence is vanishing in front of the country's strong dependence on international factors.

As far as the political elite is concerned, the domestic economic and financial structures further decreased the elite's devotion to full democratization and to more radical economic reforms. The pressures of the economic elite are added to the already well-known high political costs of economic reforms, and to the pressures of a large public sector fearing unemployment, as a further incentive for the political elite to follow its own private

[550] See for example Pešić, 2006.

corporative interests instead of pushing for difficult reforms. After a decade and a half since the "economic transition" and "capitalism", Serbian political elite does not enjoy the enthusiastic unconditional support the leaders of the EEC had at the beginning of the Nineties (Winner, 1998, uses the widespread popular support for the transition and capitalism as an explanation for the possibility the leaders have to pursue the reform). Further on, the stability of tenure enjoyed by a part of the political elite also represented a factor that, according to Hellman, favoured the delay of the reforms, both political and economic. Strongly influenced by the tycoons who offered financial support to the politicians, and due to the weak mechanisms of the electoral and horizontal accountability not vulnerable to the citizens' pressures, the new, "democratic" ruling elite of Serbia became an obstacle to the economic and political reforms, driving benefits from the status quo. Predictably and in line with the findings of different studies underlining how, in Eastern Europe, the economic reforms followed a rhythm similar to the political transition[551], the partial democratization and low quality of established democracy we registered in other sections is repeated in the field of the economic reforms as well.

17.1.2. EU Economic Incentives

Beside the interests of the economic elite in the process of democratization and EU integrations, another important aspect we should examine concerns the economic costs and benefits the political elite could derive from the process of EU integration. The main thesis upon which the entire process of the democracy promotion is based underlines the possibility to use incentives (political but also economic) to shift the domestic decision-makers' costs and benefits balance. The eventual loss suffered due to the adoption of the externally promoted norm is compensated by the gains deriving from the IA. In this section we will therefore examine the incentives used by the EU in promoting the democracy and reforms in Serbia and their capacity to switch the costs-benefits balance of the domestic stakeholders.

Surely one of the most important means of influence that the EU and international community had at hand was the financial incentives in the shape of financial assistance, donations, the large foreign debt Serbia had towards the governments of the EU countries, all these represented significant sources of the EU economic influence on Serbian decision makers. Furthermore, as the western democracies could also use their veto power in the WB,

[551] Vachudova, 2001, Hellman 1998, Bruszt, 2002.

IMF, EBRD and other international monetary institutions, they could further use the economic incentives to promote their own agenda in Serbia.

Serbia, after Milošević, registered a situation of destroyed economy and finances. The external debts amounted to 14 billion dollars, representing the 140% of the national GDP. As part of Serbia's loan derived from the interests maturated during the '90s when, due to the financial sanctions to the country, Serbia was not allowed to service its debt, getting the sanctions lifted and to getting the country integrated in the international financial institutions was an absolute priority of the new political elite. This made Serbia's authorities very vulnerable to the international conditionality which was, as we will see in the next section, concentrated on the requirement to cooperate with the ICTY. The cooperation with the ICTY and the arrestment and delivery of Milošević to ICTY in 2001 were central conditions for the grants offered in this period, for the participation of the USA and EU on the donors conference for Serbia and for the membership in IMF which was made a necessary condition for other assistance and arrangements. The agreement with the Paris club, which wrote off 66% of Serbian foreign debt, was concluded thanks to the USA advocacy as a reward for the cooperation with the ICTY (see Begović and Đilas, 2005). The first stand-by arrangement with IMF was concluded in June 2001, again including, among political conditions, the cooperation with the ICTY. Finally, the date and context of Milošević's delivery to Hague (see next section) just a morning before the donor's conference for Serbia, where €1,6 billion of assistance were raised, is rather indicative on what the key condition the Serbia was supposed to meet was.

The financial assistance offered to Serbia was surely among the highest in the region (according to some domestic media such generosity was also aimed to compensate for the western policy towards Serbia during the '90s). In 2004 Serbia was among the biggest recipients of the EU assistance in the Europe (both in absolute and in per capita terms), the biggest recipient of the EC net aid, it was among the priority area of assistance for 10 member states of the EU and was one of the top five recipients and priorities of the overall EU assistance. The CARDS/IPE programs in Serbia reached €1.3 billion, almost four times the CARDS/IPE assistance made available to Macedonia. However, as we will see, financial aid is not a sufficient condition for the compliance with the norms promoted, on the contrary, regardless the high level of the EU financial assistance invested in the country, Serbia is the only potential candidate where a significant opposition to the integration into EU is present.

Beside the presence of the anti-EU option, other reasons also contributed to the incapacity of the EU financial aid to foster the compliance with the norms promoted. The first reason to be found lied in the rather low credibility of the EU conditionality in Serbia, hampered by the EU's security concerns that prevailed as the main goal of the EU's policy in Serbia. According to the European Agency for Reconstruction's documentation, only in few fields the access to funds was explicitly conditioned by the rule adoption (in the field of both police and civil service reform, all assistance was conditioned by the rule adoption, while the funds concerning the civil society, media development and fight against corruption became subject to the conditionality only in 2005).

Further on, while the international assistance was decisive to support Serbian economy in the period of the reforms and it was of particular importance to fill the gap in those fields where the private capital would not have interest to flow, as some authors pointed out, the international donations might also hamper the elite's commitment to the reform:

> "Governments receiving funds try to satisfy interest groups and don't risk the loss of votes due to the difficult structural changes. Secondly, if the amount of money available by the state increases, it increases the political and economical power of the bureaucrats and the state. Thirdly, some space opens up for corruption. It is rather questionable what would have happened if there had been no donations to fill some large "holes" in Serbian economy, such as the energetic, social affairs, etc? Would the authorities be forced to speed up the reforms or would they look for alternative sources of money, through privatization, sales of monopolistic rights, quotas and licenses?" (Prokopijević, 2002 pp. 56-57).

The funds granted to Serbia were conditioned by both the political and the economic-structural reforms. The fragility of the peace in the Balkans and the importance the international community gave to the compliance with the issues concerning security (ICTY, Kosovo, see the next section) resulted in a situation where the insufficient compliance with the economic and political reforms was also tolerated. Thus, the entire process of financial assistance to the country was based on the *"other"* political issues rather than on issues concerning the economic and democratic transition. As Prokopjević stressed,

> "The credibility of the government in front of the foreign governments and non-market based funds (the credibility gained by political cooperativeness for example) is something completely different from the credibility of a country for private domestic and foreign direct investors, which can be achieved only through the creation of favourable conditions for investments, and not through political moves. Donations are economically far less efficient than direct private investments. They go mostly into budgetary consumption and subsidies. Even when a state uses them for investments, their efficiency level is much lower than that of the private investment. Unlike donations, which amount does significantly diminish before they reach the target (they diminish as a result of the costs of equipment, expert work, corruption, etc.), private capital brings even more advantages – increase in productivity and employment, transfer of know-how, increase in exports, etc." (Prokopijević, 2002, p. 58).

The financial assistance in Serbia aimed at political goals rather than at fostering the economic development of the country or its democratization. The political conditionality in financial assistance was important even in those institutions that officially did not condition their grants with political criteria (we can recall the USA threatening that, in case of weak cooperation with ICTY, they would use their vote in the IMF to stop the arrangements with FRY). Such financial assistance on one side failed to credibly foster the democratization and/ or economic development of the country, while on the other the *content* of these requirements (ICTY cooperation) only further increased the already high costs the old-regime elite was bearing (see the following section). The strongest pressures were exercised in the first years of transition in order to promote the cooperation with ICTY (as we will see, an issue drastically increasing the costs of integration for the old elite), and the creation of the State Union with Montenegro. Since the split Đinđić – Koštunica, the rise of the nationalist forces in 2002 – 2003 (a process guided *also* by the old economic elite, that surely preferred the nationalists and Koštunica due to the guarantees and the policy of continuity these forces represented), and the assassination of the Prime Minister Đinđić, the international community security concerns significantly rose, which contributed to diminish the credibility of the conditionality concerning the economic reforms.

As the security threat of the rising Serbian nationalism diminished the country's vulnerability to the international actors, the IA's financial assistance, guided by the IA's security concerns rather than by the democracy promotion or by ideals of economic development, became an instrument in the hands of the incumbent elite. In a scenario described by Prokopijević (see citation above), the donations were used mainly to ensure the maintenance in power of the ruling elite that continued pursuing its policy of fake compliance.

Finally, the assistance made available through the CARDS program, while surely indispensable for many of the reforms and in particular for building up the administrative capacity of the institutions, because of its very nature does not have the possibility to rebalance the distribution of the costs and benefits deriving from the process of the EU integrations. The CARDS represent a fund that is mainly dedicated to those areas defined as priorities in the Stabilization and Association Program. As such, while these funds can decrease the cost of compliance, or, better, the budgetary costs necessary for the implementation of the norms promoted, they do not tackle those costs that derive from the change of the existing status quo and by no means succeeded in changing the position of the

veto-players opposing the reform. Even though we can easily imagine the citizens' benefits from the creation of the efficient institutions for the fight against corruption, for the protection of consumers, for the fight against money-laundering or the benefits deriving from the independent judiciary, all issues strongly supported with the EU CARDS assistance, it is hard to imagine how the forces opposing the change (the corrupted official, the politician abusing their power, the judge whose incompetence is covered by his political background) would change their opinion on the reform due to the realization of the CARDS programs. This was even more the case in Serbia, where the supply-driven conception of CARDS and the lack of basic consensus over the desired reforms resulted in a complete lack of domestic vision that CARDS assistance would have supported. The programs were thus strongly decided by the EU's agenda and the country missed the opportunity to be an equal partner in deciding the use of the assistance (see Begović and Đilas, 2005).

17.2. Macedonia

17.2.1. The Birth of Macedonian Economic Elite: Adapting to International Pressures

Unlike Serbia, that had been cut away from the international economic flows for almost 10 years and delayed the political and economic reforms, the development of Macedonian economic elite took place in an environment that was more open to the international influence and in the setting of the political pluralism[552]. Despite the former communist elite keeping the power in both countries, different levels of political change brought to radically different patterns of economic transition: a delay of reforms in Serbia and its rather fast development in Macedonia. As Walder convincingly argued, the extent of the regime change and the extent of regulatory constrain on the asset appropriation defines the type of transitional economies and determines the elite's opportunity and behavior under such assets[553]. As we will see, the similarities and differences between the transitions in Serbia and Macedonia, among other factors, were strongly influenced by the combination of international influence and domestic factors.

[552] When we consider Macedonia as a case of the political pluralism, we actually make comparison with Serbia. Obviously that if compared with some other countries of the CEE Macedonian would show the lower levels of the political pluralism.

[553] See Walder, 2003.

Immediately after independence, Macedonia faced a difficult process where the nation-state building, democratization and economic transition process were contemporarily taking place. The biggest controversy appeared to be the name of the country that raised the opposition of Greece, who objected on the country's name, flag and some articles of constitution. Even though the Arbitration Commission of the Peace Conference on former Yugoslavia declared that the country met the conditions set by the EC for international recognition, Greece used its influence in EC to block the recognition of Macedonia as an independent state[554].

In this first period Macedonia undertook a series of stabilization policies, minting its own currency, fighting back the hyperinflation inherited from the old Yugoslavia and pursuing the privatization of the public assets according to the 1990 federal Law on Social Capital. According to this law, the companies were corporatized and the employees allowed to buy shares in their own firms at a substantial discount to their market value[555]. As Petkovski and Bishev (2004), Slaveski (1997), Georgiev and Nedanovski (2002) underlined, the process of privatization that took place in these first years allowed the powerful managers of these companies to easily seize the public assets. The strong lobby of managers of the public enterprises ensured that the federal law regulating the transformation of the property remained in force even after the independence, until 1993 when the new Law on Privatization was adopted. The low regulatory constrain on the asset appropriation was the most salient characteristic of Macedonian privatization in this period that allowed the existing elite (former communists and managers of the state companies) to abuse of their positions and to easily switch their political power and social privileges enjoyed in the previous regime into economic power and wealth in the newly emerging capitalist economy[556]. Officials used their possibility to extract incomes from their posts so "the new propertied and corporate elite was created out of the old elite" (see Walder, 2003, p. 907). As the regime change was not extensive (the transformed communists kept the power until 1998), the former communist party continued to exercise power, retained the control over the appointments but, as a part of its ideological transformation, refused the previous ideology and decided to privatize the assets:

> "(*In these cases*, n.d.a.) communist hierarchies do not collapse. Instead, they withdraw from multinational federations like the former USSR or Yugoslavia and continue to rule initially as dictatorships while they abandon their commitment to state ownership and the command

[554] "Recognition of States - Annex 2", Declaration on Yugoslavia (Extraordinary EPC Ministerial Meeting, Brussels, 16 December 1991). See the section on the name-dispute.

[555] See Petkovski and Bishev, 2004, IMF report on Macedonia 1998.

[556] On the elite's opportunity structure in the process of the economic transition, see Walder, 2003. On the process of privatization in Macedonia and the assets appropriation through the abuse of power see Labovik, 2005, pp. 274-325.

> economy. The initial period of reform in these countries proceeds with the entire Communist-era elite still largely in place, and constrained neither by continuing state commitment to public property or by effective regulations to restrict asset appropriation" (Walder, 2003, p. 906).
>
> "This situation permits the widespread transfer of state assets into the hands of officials, their kin, and their associates, or the extraction of large incomes from the discretionary powers of office. Elites may continue in political posts or depart from them at their discretion" (idem, p. 903).

In those companies that were not privatized, the managerial elite (in collision with the ruling elite) used its position to empty the company's accounts, making many firms valueless in order to allow the management teams and individuals close to the ruling parties to purchase the firms at the lowest possible price (see Georgiev and Nedanovski, 2002, Labovik, 2005). Some authors (like Nikolov, 2004), underlined that Macedonian institutions provided the incentive for re-distributing the existing capital rather than for its growth and development, considering the patterns of privatization as one of the obstacles in the process of Macedonia's economic development.

At the beginning of the Nineties the situation in Macedonia appeared to satisfy the conditions for the development of the "winner takes it all" mechanism described by Hellman (1998). The partial reform (or better said, the initiated economic transformation that, due to inadequate regulation, opened the possibility for the appropriation of public property described above) combined by the rather low level of democratization (the transition was at the very beginning), a rather stable tenure (the communists stayed in power until 1998), and the developed links between the newly emerging economic elite and the ruling parties according to Hellman's model represented an asset in which the net-winners of the first economic reforms would be induced to obstruct further reforming. However, in Macedonia's case, Hellman's puzzle on how to limit the winners' negative influence on further reforms[557] found its answer in the role of the international financial institutions. The integration of Macedonia in the international financial institutions, together with the country's high vulnerability to the external influence, pushed forward the economic reforms in Macedonia.

As the name dispute with Greece was calmed with the "temporary" solution in 1993, Macedonia finally entered the UN, WB and IMF (a membership until 1993 vetoed by Greece), which allowed the country to access the cooperation and assistance programs of these institutions. As Petkovski and Bishev argued, since 1993 "The stabilization and reforms in Macedonia have been supported considerably by the international multilateral financial

[557] Ekiert, Kubick and Vachudova, 2007, mentioned three possibilities for preventing/braking the creation of the vicious circle of the "partial reform trap": 1) expansion of welfare policies 2) provision of the external incentives too costly to ignore (such as EU membership), 3) relaying on possible external or internal shocks or political crisis.

institutions. The cooperation with IMF and World Bank during the transition was permanent" (Petkovski and Bishev, 2004, p. 9). Of particular importance was the IMF, who played a "leading role in designing and monitoring the implementation of stabilization and structural adjustment policies. The role of IMF was threefold. First, IMF substituted the lack of a strong political base, "visionary and authoritarian leadership", and non-existence of coherent economic team. Second, IMF contributed to the creation of consensus among different interest groups and political parties. Third, the IMF was free to focus on economic goals and had undertaken the role of top political leaders to supervise the bureaucracy" (Petkovski and Bishev, 2004, p.5). In fact, the index of Macedonia's economic reform signs its most significant growth in the period immediately after its integration in the international financial institutions, its average index of economic reforms surpassing even Bulgaria and Romania in the same period (see Figure 3 in the appendix). The external influence thus pushed forward the reforms in what, at least according to factors identified by Hellman's model of partial reform, appeared as a potentially un-favorable ground for further building of the market economy. Even the most difficult decisions (the cuts in the state expenditure, the stability of the currency, the cuts in the state administration, the "shock-therapy" approach that according to some domestic authors deepened Macedonia's economic crisis instead of bringing further development[558]) found their response in Macedonia, mainly due to the state's extremely high vulnerability towards the international community. Such particularly high vulnerability to the international influence that made the international actors rather important in both the process of democratization and the economic transition in Macedonia can be explained by the following three factors:

1. The disputed statehood and necessity to ensure the international recognition under its constitutional name made Macedonian policy makers particularly sensitive to questions like the international standards, membership in the IO and the requirements deriving from the membership in these organizations. The research for the international recognition thus increased the incentive for compliance, inducing Macedonia to respect

[558] It is not an aim of this work to analyze the effect on the economic development of the reforms promoted in Macedonia by the IMF and WB. The economic reforms do not necessarily bring to economic development and Macedonia is one of the examples. The failure of the economic strengthening in Macedonia was caused by a series of factors, domestic and international, from the difficult starting point to the bad solutions (like privatization), weak state, unfavorable export structure, the dissolution and war in Yugoslavia, Kosovo conflict, the 2001 domestic conflict. According to Nikolovska and Silajnovska-Davkova (2001) the reform-package promoted by the IMF and WB also were among the causes for the stagnation of Macedonia's economy. The key point of this discussion is: which ever, positive or negative, effect of the norms promoted by the international actors, Macedonia showed a rather high level of compliance with these norms.

even those obligations that were highly costly for the country (like the UN embargo to the Federal Republic of Yugoslavia, Macedonia's most important trade partner).

2. The fragile domestic stability and inter-ethnic peace and existence of the secessionist Albanian ethnic minority, particularly in the context of the inter-ethnic conflicts devastating the rest of former Yugoslavia, and the hostile neighborhood[559] increased the country's security concerns. Lacking the army and almost without any security sector (see the section on the security sector) and collocated in an extremely instable region, Macedonian political leadership was forced to seek for international military protection, which further increased the international influence on the domestic political process. After the 2001 inter-ethnic conflict, as we could see in this work, the international actors became even more important as they assumed the role of guarantees for the respect of the inter-ethnic agreement. Not only military and police international missions, but also diplomatic activities, mediation in negotiations and strong pressure were used by the USA and EU in order to maintain the fragile inter-ethnic balance in the country.
3. Last but not least, the disastrous economic situation of the newly independent state, the least developed republic of the SFRY, whose economy was strongly integrated with those of the other republics and depended on the overall performance, made Macedonia economically dependent on the international assistance, credits and arrangements with IMF and WB. As the SFR Yugoslavia experienced a deep economic crisis during the 80s, in the aftermath of its independence Macedonia was facing hyperinflation, unemployment, lack of foreign exchange reserves and an economy that had been contracting for more than six years[560]. Finally, the small territory and the lack of natural resources of various kinds made the external economic ties of enormous importance for the country[561]. The economic vulnerability further increased the importance of the international influence on the country, making Macedonia extremely

[559] We already underlined the name dispute between Macedonia and Greece. Further on, Bulgaria also had some objections concerning Macedonian language and nation that threatened the country's process of nation building. Even though it was the first to recognize Macedonian state after its independence, Bulgaria continued to argue that Macedonian is not a language but a Bulgarian dialect and to negate the existence of Macedonian nation, a question that had developed already at the end of 40s, after the Tito-Stalin split. Further on, according to the vision of the most radical Serbian nationalists, the project of the Great Serbia included the territory of Macedonia too, considered by Serbian nationalists as "southern Serbia". The fear existed that Milošević's acceptance of the peaceful secession was only a temporary approach dictated by his attention to the ongoing war in Bosnia and Croatia. See Bozzo and Simon Beli, 2000.

[560] See Petkovski and Bishev, 2004; also Hristova and Petkovski, 1999.

[561] See Petkovski, 2001.

open to the financial (and political) influence of the richer West. Due to the slow economic development (caused by a series of factors, the most serious of which concerned the regional instability and the armed conflict in Kosovo and Macedonia), as well as due to its small, open economy, the country's prosperity is closely linked with its foreign trade and external relations[562], which thus represents the further source of international influence on the domestic economic and political development.

The international leverage of Macedonia is thus supported by three key factors (foreign relations, economy, security) making the country far more vulnerable to the external pressures than any other candidate/member countries, except for two international protectorates, Bosnia and Kosovo. The domestic support for the EU and NATO integrations is strengthening this influence, in a manner that makes the country's strategic, political, security and economic interest coincide with the preference of its citizens. Last, but not least, the evident necessity for external legitimization[563] and eventually for the foreign financial support to the political parties[564] made the EU and USA become important stakeholders in the process of the decision making in Macedonia.

Immediately after the integration in the international monetary institutions, the new Law on Privatization was adopted, under which the privatization could take a number of different forms. The company's management was allowed to choose the method of privatization, submitting their plan to the Privatization Agency[565]. However, the high levels of politicization of both company's managerial boards and Privatization Agency[566] actually meant that the prevailing pattern of privatization remained the same. The insider's privatization with management and "employee buy-out" model prevailed, amounting for 87% of the privatization that took place until 1998 (IMF data, 1998) and about 70% of the total number of companies in Macedonia.

[562] See Petkovski, 2001.

[563] The importance of the external legitimization for Macedonian ruling elite clearly emerges from the statement of the USA ambassador's prior to the 2006 election in Macedonia: "If anybody wins or wants to win by manipulating the elections, it is clear that we as US government cannot see them as the ones that won without manipulations. I imagine that one of the consequences for them is that they will soon realize that their possibilities for a career shall be interrupted!".

[564] The lack of transparency in the financing of the political parties in Macedonia does not allow a more precise analysis of this aspect. Yet, the Southeast European Legal Development Initiative, 2002 underlines that in several cases during the electoral campaign the international transfers of money to the accounts of the ruling political parties were registered. See also Traneska, 2004.

[565] IMF report on Macedonia 1998.

[566] See Georgiev and Nadevski, 2002.

Even in those cases when the outsiders were allowed to participate to the privatization of Macedonian companies, a series of negative factors obstructed the attracting of flows of the foreign capital into the country. The weak institution, problematic neighborhood and internal instability all contributed to the extremely low levels of FDI in a country which started to grow only in 1998, when the price stabilization and the government's policies aiming to attract foreign investors took place. However, the conflict in Kosovo in 1999 and the 2001 violence halted the emerging positive trends in Macedonian economy and trade, and again obstructed the attraction of foreign capital into the country. In the mid '90s, Macedonia was among the countries with the lowest levels of the FDI and FDI per capita[567] and the attraction of foreign capital remained a serious problem Macedonian policy makers are coping nowadays as well (according to the World Bank data, Macedonia attracted 172 USD of FDI per capita until 2007, a very low sum for a EU candidate country, particularly if compared to Croatia's 767 or Serbia's 692[568]).

The liberalization of Macedonian economy also initiated far earlier than in Serbia. As the country inherited the rather liberalized trade regime of the former Yugoslavia, it further liberalized and rationalized the tariff system, lowering the average tariff rate first in 1996, and then again in 2001. Since 1996 the country entered numerous bilateral trade agreements as part of the government's main vehicle for trade liberalization[569].

Such quick opening of Macedonian economy, according to Petkovski (2001), is to be explained with the commitment to liberalization of Macedonian elite, with the links between Macedonian economy and that of other former Yugoslav republics, and finally with the fact that the foreign trade grew much faster than the output. The small size of the country and its strong linkage with the economies of the former Yugoslavia pushed Macedonia to open its economy, resulting very soon to be the most open and most integrated in the international trade country in the region. In '98 its merchandise trade accounted for 103% of the GDP, more than any other South European Country (Croatia's merchandise trade was 95% of its GDP, Bulgaria's 98%[570]). Until 2008 this figure grew to 113%, almost double of Serbia's 65%[571].

[567] In 1996 it attracted only 40 millions of USD of FDI, meaning 20USD of FDI per capita, an amount even smaller than Moldova and Albania, not to mention Croatia or Slovenia), while at the beginning of 2000 it counted for a better result in terms of FDI per capita than Bosnia, Moldova, Albania and Romania. See Zakharov and Kušić, 2003).

[568] Data source: World Development Indicators database, September 2008.

[569] See Petkovski and Bishev, 2004.

[570] Data source Petkovski, 2001.

[571] Data source: World Development Indicators database, September 2008.

The growth of the merchandise trade however did not help Macedonia to successfully service its external debt, as the misbalance between import and export made the foreign trade performance rather unsatisfactory. On the contrary, due to very strong import and far weaker exports, the external debt of the country actually doubled from 2000 to 2006. Among the causes of this poor performance (in the period from 1995 to 2000 the average trade deficit amounted for about 13% of GDP, to increase to 19% for the period 2001-2004[572]), we find the external and internal political shocks and instability (Kosovo crisis and 2001 violence in Macedonia), combined with the inadequate specialization in production and trade. Macedonian export is strongly concentrated and it has been intensified in sectors with a declining share in world manufacturing trade[573]. Moreover, the country is specialized in the export of semi-final goods and rough materials with lower added value, and in the export of goods produced by heavily import-dependent industries. This makes the increase of exports without increase of imports impossible, which further contributes to the difficulty in surpassing the large trade deficit[574]. The standardization, very often used by the states for the protection of the own market, is not allowing Macedonia to fully benefit from its trade agreements and membership in the WTO, as its industry is not always capable to meet the highly settled standards[575]. Last, but not least, among the causes of the low competitiveness of Macedonian economy, also hampering its attractiveness for the FDI, we find the weakness of the state institutions, a weakness that we described in the previous chapters dealing with the different areas of state functioning. The difficulty in the economic strengthening, the high foreign debt and the trade deficit, the low amount of the FDI still represent the problems of Macedonian economy, which, together with the high levels of the economy's openness continue to nurture the country's vulnerability to the international influence we described above.

What can be said about Macedonian economic elite's preferences and interest in the process of the democratization and EU integrations?

Born together with the process of the democratization, the economic elite of Macedonia got quickly adapted to the political pluralism and did not perceive the political transition as a threat the way Serbian business did immediately after the fall of the regime in 2000. They got quickly used to the dynamics of the competitive political system and learned to adapt to the

[572] Gutierrez, 2006.
[573] Gutierrez, 2006.
[574] See Mojsovska, 2005.
[575] See Mojsovska, 2005.

changes on the political scene. Here again, the existence of strong international influence played an important role in the distribution of power between the business and the politics. In dynamics similar to that of Putnam's two-level game, the weakness on one side can successively be used as a resource on the other, so that the increased dependence of political actors on the international community at the same time decreased their vulnerability to the domestic economic elite. As a consequence, the state-capture and business influence over the decision-making process, even though widely spread, are limited in the International Actors' priority dimensions. There is thus an interesting ambiguity in the Macedonian setting, that can be blamed on the divergent influence of internal and external dynamics. On the one hand, in the chapter dedicated to the corruption, we registered a high levels of the state capture, on the other, here we register the certain weakness of the economic elite vis-à-vis political elite and the limits to their influence deriving from the International Actors' intervention. Yet, we should also recall that, in the asset of the weak institutions and low administrative capacity, the Macedonian compliance with the externally promoted norms often represents a combination between the rule adoption and lack of implementation, which thus relativize the conclusions concerning the IA's influence on the economic reforms. If we summarize the factors that brought to such setting we find: on the one hand the situation that, according to Hellman, favored the partial reforms; the shortcomings in the inter-institutional accountability (see the section on the form of government, judiciary and corruption) that according to Bruszt favor the state capture; the overall politicization that strengthen the political parties; all factors pushing towards a setting similar to the one registered in Serbia. On the other hand, however, we find the strong IA leverage that, due to the country's high vulnerability to the external influence and economic dependence on the International Actors is capable to successfully push forward at least the rule adoption. In such assets, the exit is rather ambiguous: the reforms are pushed forward, but their implementation is filtered through the domestic factors. We can recall the Law on Privatization: it was changed in line with external recommendations, still, the prevailing pattern did not change; similarly, the IMF and WB recommendations concerning the downsizing of public spending and the transparency of public procurement were all filtered through the domestic ruling elite's interests bringing to the fake compliance. When ever possible, the ruling elite seeks to avoid the undesirable reforms, but due to the high external leverage, it can do so only in a measure in which the IA allows so.

The economic elite in such ambiguous setting creates a rather ambiguous preferences. According to some domestic experts, not only is Macedonian economic elite weaker if compared to the international community, but also it is not stronger than, and it might even be subordinated to, the more dominant political elite[576]. Their possibility to influence the politics is limited by the interests of the political elite and by the interests of the International Actors who also exercise an important impact. They have an important interest in maintaining of the status quo, as they are among the principle users of the politicized administration, corrupted judiciary, untransparent decision making. But at the same time, not being strong enough to fully control the legislative process, and as, due to the often changes in office all of them experienced the difficulties and discrimination based on the party lines, they are also interested in the creation of the clear rules of the game that would bring more certainty in the market functioning[577].

Similarly, the integration of Macedonia in the international flows and institutions and the opening of its economy started already during the mid '90s, so that the emerging business elite learned rather quickly to deal with and to accept the economic effects international environment. The long history of arrangements and the high level of IMF and WB leverage on Macedonia actually meant that Macedonian economic elite was already well used to the fact that it lost its influence over some aspects of policy (like for example the macro-financial policy dictated by the IMF). This created a far more favorable approach to the further opening of the economy and further international influence than in Serbia, where the economic elite was developed in a period of the international isolation. Aware of the inevitability of Macedonia's process of integration and of the lack of any perspective for those who do not achieve international legitimacy, the economic elite has already long ago started to adapt its own strategies to the new realities[578]. This acceptance and the lack of opposition to the process of democratization and/or EU integrations is therefore combined with a low influence on the decision-making process that an anti-EU, anti-democratic economic elite could exercise.

[576] Based on the e-mail interview with prof. Hristova Lidija, Institute of Sociological, Political and Legal Studies, Skopje, 1.12.2008.

[577] Based on the e-mail interview with prof. Hristova Lidija, Institute of Sociological, Political and Legal Studies, Skopje, 1.12.2008.

[578] Based on the e-mail interview with prof. Hristova Lidija, Institute of Sociological, Political and Legal Studies, Skopje, 1.12.2008.

17.2.2. EU Economic Incentives in the Anchoring Process.

We have already underlined that the deep economic crisis on one side, and the high level of the openness of the economy and importance of the external trade on the other, pushed Macedonia into an economic dependence on the west, increasing both the economic and the political leverage of the international actors. The economic dependence (that, according to some domestic authors, reaches the levels of a real "lack of economic sovereignty"[579]) thus diminished the influence of the domestic economic elite (fostering it to adapt to the internationally promoted norms as we described), and represented a substantial dimension in the cost-benefits calculation of the ruling elite. The economic dependence, combined with the country's security dependence on the west and its elite's political dependence on external legitimization actually produced an asset in which a high level of compliance could be reached with a low level of financial assistance. We can thus observe that the EU's financial assistance to Macedonia in absolute amount was much lower than in Serbia (320 millions compared to 1.300). In terms of the foreign aid per capita, the two countries are on a similar level, Serbia still maintaining a slight difference (in the period 2001-2004 Serbia scored 83 dollars of EU aid per capita, while Macedonia, in the far longer period between 1997 and 2004, was granted 77 dollars of EU aid per capita)[580]. Moreover, while in Serbia the EU aid accounted for 58% of the external donations, this share is slightly higher in Macedonia, 62%, illustrating the stronger EU influence in Macedonia than in Serbia. Finally, while Serbia was a top recipient for many of the EU member states and for the EU in general, the only EU country for which Macedonia was one of the top 5 recipients of financial assistance was Slovenia (it is relevant to underline that the Slovenian financial assistance is mainly directed to the Former Yugoslav republics, where the Slovenian outward investments is mainly concentrated[581]).

Again, unlike what was registered in Serbia, the stronger EU leverage in Macedonia was combined with other factors favoring the positive compliance with the externally promoted norms: as the analysis of the CARDS documentation (available on the EAR website) showed, the financial assistance in Macedonia was much more often conditioned by the rule adoption/ implementation than it was in Serbia.

As far as the capacity of CARDS to diminish the losses suffered by the actors, similarly to what was the case in Serbia, the CARDS assistance in Macedonia was capable only to tackle the government's costs of the realization of particular norms, not those that the actors

[579] See Nikolovska and Siljanovska-Davkova, 2001.
[580] See EU donors' atlas. See also the European Agency for Reconstruction's annual report 2006.
[581] See Svetličić, 2007.

suffered due to the introduction of the new norm. However, unlike in Serbia, where the losers from the process of democratization, from the process of EU integration and, often, from the particular policy promoted coincided, in Macedonia's case, due to the content of the norms promoted and the EU priorities in Macedonia, the groups enduring the costs from the compliance with the EU-promoted norms were either too weak to reverse the process (like for example the employees who lost their jobs due to the cuts in the civil service or in the military), or were the actors whose costs were compensated due to their strong preference for the EU integrations.

The causes for the negative developments and the rather low level of the quality of democracy established in Macedonia is therefore not to be sought in the inefficiency of the CARDS and financial assistance in promoting the rule adoption, but, as we have often underlined in this paper, in the *content* of some of the norms promoted by the EU (here we mainly refer to the inter-ethnic power-sharing mechanisms that brought to the institutionalization of the ethnicity in Macedonia, see the previous chapters), and in the priorities and interests of the EU engagement in Macedonia. The necessity to ensure the peace in the country and the EU security concerns brought to a situation where security was more crucial than democratization. Unfortunately, as we argued in the chapter about the constitutional issues, the solutions adopted by the international actors (ethnically based power-sharing) produced a segmentation along ethnic lines of the struggle for power[582], introducing thus potentially unstable solutions that actually favored the further politicization of the ethnicity.

The security agenda of the EU was evident from both the repeat of the OFA implementation as a key-condition for all financial assistance (and EU integrations as well), and from the structure of the CARDS program where decentralization, police reform and minority rights (all key dimensions of OFA) absorbed more than 35% of the total EU assistance to Macedonia. The net beneficiaries in these dimensions were the members of the Albanian ethnic groups (being the main beneficiaries of the OFA, they are obviously most

[582] The "segmentation" of the struggle for power in the ethnically based power-sharing settings is a term corresponding to what Goio (2008) labeled "decentralization of the struggle for power" in the ethnic federalism. The mechanism the two phenomena refer to are rather similar: the closing of the political competition within the ethnic community. As Goio stresses, this enclosing of the political struggle in ethnic groups strengthens the identifications within the ethnic group, favoring the politicization of the ethnicity. The segmentation on the social level is thus further re-strengthened and the national unity is created on a level of political regime, where the ethnic elites are joined together. This makes the entire setting potentially instable (unless the segmentation on the social level is not avoided by the establishment of ties between the communities), as any shock at the level at the central level might bring to disintegration.

favored by its implementation) who often were also the main recipients of this assistance. At least in some of the fields the effect of the EU engagement in Macedonia had a strong re-distributive effect and the CARDS program only further strengthened this re-distribution. A good example is the case of the programs aiming to foster the equal representation in the state administration. Not only did the rule implementation actually bring to a re-distributive effect (particularly seen the parallel downsizing in administration, see the part on the civil service reform), but also the CARDS programs were concentrated in financing the trainings for the members of the minorities. In the EU key-fields of action, the most important actor enduring costs from compliance was Macedonian ethnic group, whose losses were both economic and political, on both elite and citizen level. However, the fear for potential conflict and the presumed security, economic and political gains from the EU and NATO integrations, ensured the support also of those actors that endured huge costs from the implementation of the norms promoted.

17.3. A Comparative Assessment

In the previous sections we described the interests of the economic elite in the process of the international anchoring of democracy in Macedonia and Serbia. We showed how the different settings in which these elites developed, together with the particularities of the EU approach to the two countries, produced different patterns of business interest and influence.

First of all, the setting in which the economic elite was born and socialized significantly differed in the two countries. While Serbia, in the Nineties, did not further develop the economic reforms undertaken in Yugoslavia during the Eighties (a part some small developments in the price liberalization and small scale privatization), Macedonia advanced with the economic reforms, particularly in the period after its integration in the international monetary institutions in 1993.

Further on, the political environment in the two countries also differed. While Macedonian transition to democracy started already with its independence in 1991, registering the first peaceful change of government in 1998 and holding free, competitive elections in the entire period 1991-1998, in Serbia the transition was interrupted by the establishment of the authoritarian regime with nationalistic mobilization. This significantly influenced the links between politics and the economic elite, and marked the economic elite's interest in the

democratization process. We thus underlined how, in Serbia's case, the economic elite born during the '90s was strongly linked with Milošević's regime, which made them part of the authoritarian regime's ruling coalition. Once the regime changed, the economic elite experienced a period of high uncertainty until they succeeded in establishing ties and corruptive links with the new political elite. Differently, in Macedonia the economic elite was born in a context of political pluralism, thus avoiding the establishment of strong linkages with one particular political actor (even though the prevalence of the former communists in the first years and the weak regulation in the process of appropriation of the assets have significantly favored the enrichment of the former communists in managerial positions[583], however the emerging political pluralism forced this elite to adapt to possible changes in the ruling elite). The level of political participation and competitiveness of the system appears to be crucial in this point: Hellman (1998) convincingly argued that the level of competition of the political system significantly influences the possibility for winners from the first years of the transition to obstruct further reforms. While Macedonia, since the beginning of the transition, scored numerous shifts of government (also due to the nature of its party system, please see the section on the political system), in Serbia the electoral accountability was rather limited, first due to the authoritarian regime in place until 2000, and then due to the polarized-pluralism type of party system, that produces the peripheral turnover on government. This becomes evident if we analyze the party-affiliation of the ministers of economy and governors of the central bank: while, unsurprisingly, in the '90s it was Milošević's SPS to keep these positions, since 2000 this privilege was assigned to G17plus, a political party formed by "economic experts". It is often forgotten that, being formed by a group of economic experts, the members of the G17 NGO, and then members of the party G17plus, in all different governments formed since October 2000, held positions linked to the economic sector (the minister of finance and economy and the governor of the central bank in 2001 – 2003 were members of the NGO G17, the minister of finance and the governor of the central bank in 2004 – 2007 were members of the party G17plus, the minister of economy and the governor of the central bank in Koštunica's government in 2007 – 2008 and then in the current Cvetković's government in 2008 – also are members of this party). Such prevalence of the party incumbents in key positions controlling Serbian economy reveals a de-facto absence of political pluralism in this area of policy. In this light, the accusations advanced by the political

[583] See Walder, 2003, Labovik, 2005, Petkovski and Bishev, 2004, Slaveski 1997, Georgiev and Nedanovski 2002.

party LDP, according to which the G17plus leader is the "personal employee of Serbian tycoons"[584], particularly when supported by the well-documented case of corruption involving the Minister of Finance - and leader of this party – gain particular importance.

Last but not least, we saw how the strength and importance of the economic elite towards the political leadership changes as we pass from Macedonia to Serbia. In Macedonia, due to the country's high dependence on external actors, the business elite is less influential than in Serbia. Thus, while Serbian authors are underlining the tycoons' control over politics[585], Macedonian authors are underlining the weakness of the domestic business elite in determining the decision-making process, hypothesizing that most probably the political parties represent the stronger partner in the relationship politics-business.[586] In the sections above we made a logical argument explaining such relative weakness of Macedonian business influence as a consequence of the EU and other international actors' support as a necessary (and, respect to the business elite's influence, also a sufficient) condition for gaining the power in Macedonia. The extremely high influence of the international community over Macedonian leadership represents a case of "weakness" that can be turned into benefits in the political leader's negotiations with the business.

The link between the economic and political elite thus significantly shaped the economic elite's preference in the process of the democratization. We underlined how a certain degree of political pluralism and political uncertainty might serve as a safeguard to Macedonian economic elite from the complete subordination to the political parties, while in Serbia the only change in the field of finances (due to the fall of Milošević regime) created a short period of economic elite's fear and induced the costs of the creation of the new network of influence. In both countries the rather low level of the rule of law, lack of institutional accountability, the corruption and the state capture are characteristics welcomed by the businessmen who are among the main beneficiaries of such asset and are well-socialized and set in such environment. However, some differences between the two countries still persist, and here again mainly due to the different levels of political stability/fluidity, particularly in the area of the economic politics. As reported by Hristova[587], the corruption and lack of clear rules of the

[584] Such link appears even stronger if we recall the fact that Mišković relayed on this party's former leader's expertise in his claiming against Serbian Commission for the protection of the market competitiveness. See footnote 7 to this chapter. Also: http://www.politika.rs/rubrike/Ekonomija/Labus-radi-za-Mishkovica.sr.html.

[585] See for example Pešić, 2006.

[586] Based on the e-mail interview with prof. Hristova Lidija, Institute of Sociological, Political and Legal Studies, Skopje, 1.12.2008.

[587] The e-mail interview, 1.12.2008.

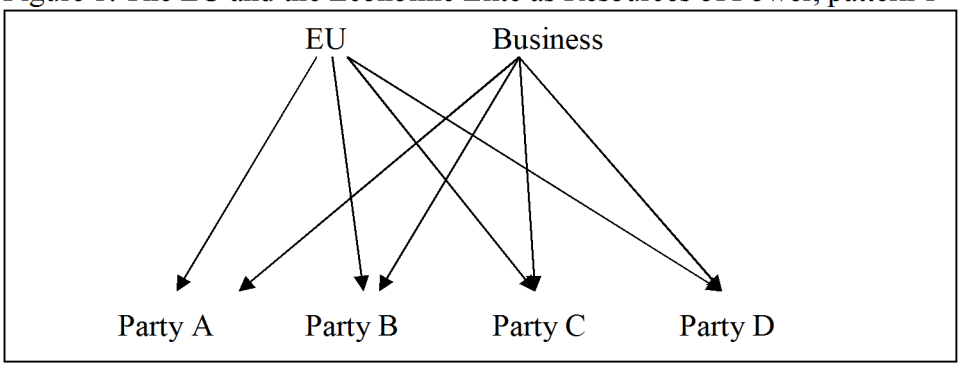
game, while surely favoring the economic elite, are perceived at the same time as a two-edge knife and obstacle to the development of the business. Precisely due to the relatively frequent turn-over on power, all businessmen in Macedonia also experienced difficulties caused by the change of the incumbent elite and the lack of predictability. This is why they were forced to develop a relatively high capacity for adaptation to the shifts in government. So, their approach to the questions of the democratization appears more complicated and ambiguous than in Serbia, where, due to the magnate's strong control over the decision-making process[588] and due to the peripheral turnover, the problem of predictability and uncertainty is not among the economic elite's fears.

The different distribution of power between politics and business creates the differences in the role the economic elite has in the country's foreign policy and in the EU integration process. While in Macedonia the economic elite's influence on politics is vanishing in front of the international actors' influence on Macedonian decision makers, in Serbia the strong economic interests can block (as we saw in the first half of 2008) the process of the EU integration. In this sense, the recent developments in Serbia (and particularly, the initiatives of Serbian business people to create the links with Brussels) might prove to be a key element in the process of Serbia's integration.

We would like to finish this analysis on the economic elite's influence with a reflection on the links and nature of the EU and economic influence over the decision makers. It is possible, for analytical purposes, to conceive both EU and the economic elite as the resources the political parties are using in their competition for power. In Macedonia's case both these resources are available to all important participants of the competition for power. The increased demand (numerous actors are seeking access to these resources) creates a competition for resources between the political parties and, consequentially, it creates the increase of the parties' compliance with the requirements deriving from the actor that provided support (EU or business elite), as described in Figure 3. The "servile" approach to the international actors of all Macedonian political parties was underlined in the interviews with various Macedonian experts[589]. The weakness of the business elite thus derives from the presence of the competitive, and much stronger, source of influence: the EU and USA.

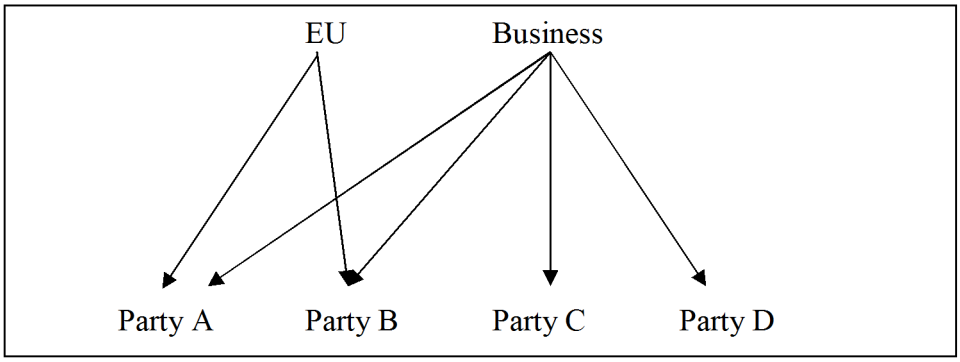
[588] See Pešić, 2006.
[589] Interviews with Hristova, Klekovski, Taseva, Jovanovski.

Figure 1: The EU and the Economic Elite as Resources of Power, pattern 1



Differently, as described in Figure 4, in Serbia's case, due to the strong presence of anti-EU parties, the EU does not represent a source of power available to all political options, while the business elite, particularly since its legitimization in 2001-2002 (see above), does not have any ideological obstacle in maintaining the link with all relevant actors present. While the political leaders do compete for financial support, they do not compete for the EU legitimization and protection, available only to some political actors. In such setting, the EU influence is weakened, not only due to the lack of its influence over the anti-EU parties, but, more importantly, to the lack of competition for the EU legitimization in the pro-EU block. In other words, as not all actors are seeking for the EU's support, the pro-EU parties can maintain their status of parties legitimized by the EU even with lowed level of compliance with the EU requirements. The comparative advantage that the EU as a resource of power might have over the domestic business elite is weakened by the "low demand" for the EU protection.

Figure 2: The EU and the Economic Elite as Resources of Power, pattern 2



Before concluding this chapter we'd like to make some final remarks on the capacity of the EU economic incentives (and mainly programs like PHARE, CARDS, IPE) to change the

costs and benefits balance for the domestic elite and to bring to the compliance with more difficult reforms. As we saw, the effectiveness of the funds invested in the two countries significantly differed, in Macedonia lower amounts of assistance produced far better compliance than in Serbia. While the causes of the different responses of Macedonia and Serbia to the EU recommendations will be analyzed in detail in the conclusions, here we would like to compare the characteristics of the EU financial support to the two countries and to reflect on the impact this financial support had.

The first important difference between the two countries concerned the amount of assistance provided, its structure (goals), and the conditionality linked with the resources. Thus, in the period 2000-2006 Serbia collected €1'208,1 million of EU assistance, while Macedonia for the period 1997-2006 was allocated only €302,5 million[590]. In Macedonia's case the access to funds was much more often conditioned by the rule adoption than it was in Serbia, and this conditionality particularly concerned the implementation of the OFA agreement. In Serbia the conditionality was used with much more determination on the micro-financial assistance, where the main condition was cooperation with ICTY, while conditionality in the CARDS program was more often used only from 2005 on. It is interesting to notice how the pattern of the EU Member States assistance in those two countries followed a similar pattern described by Fossati (2004) when analyzing the EU assistance to the East-European countries: there appears to be a significant linkage between the levels of the FDI and the country's financial assistance. It is no surprise then that Serbia, a top-user of the financial assistance from many EU member states, also counts higher levels of the FDI than Macedonia. Similarly, Macedonia is in a priority list of assistance only for Slovenia, a country whose structure of the outwards FDI is strongly concentrated on the Balkans and former-Yugoslav republics[591].

As far as the potential of the EU funds (PHARE, CARDS, IPE) to switch the costs and benefits calculations is concerned, we underlined that the very nature and the goal of these programs limits their capacity in producing the significant change in the cost and benefits calculations. We should distinguish between two substantially different types of costs that derive from the compliance with a promoted norm. One kind of costs concerns the realization of the norm. The implementation of a particular norm produces administrative

[590] Data from the EAR annual report for 2006.
[591] For the EU Member State foreign aid priorities, see Donors' Atlas, 2006. For the data on Slovenia outward FDI see Svetličić, 2007. For the data on the FDI in Serbia, data are available from the National Bank of Serbia.

costs (like for example the costs for settling a new institution that would implement the norm). Another kind of cost comes from the possible re-distributive effects a promoted norm might contain. It refers to the cost the actors would bear due to the change of the status quo. The establishment of the institution of the Ombudsman, for example, would create costs for its realization (the resources necessary for settling a new institution), but will also produce costs for the employees in the administration that would be exposed to more severe control and would no longer be able to abuse of their positions. For these actors it is irrelevant whether the Ombudsman is financed by the state budget or by external resources: they prefer that the institution does not exist at all. Being put in place with a main aim to diminish the costs of the realization of the norms promoted, the above mentioned EU programs' capacity to diminish the costs deriving from the change of the status quo is rather limited. The losers, thus, can be compensated only in some *other* dimension of the process of the integration. In Macedonia, the security concerns and the belief in the general economic prosperity of the EU membership made numerous Macedonians accept to lose their jobs due to the down-sizing civil service reform promoted by the external actors. In Serbia's case, many of the actors losing from the transition accumulated losses in other dimensions as well (see next chapter), increasing strong anti-EU sentiment.

APPENDIX

Figure 3: "The Average value of the EBRD transition indicators for the Balkan states" (based on EBRD transition indicators, author's elaboration)

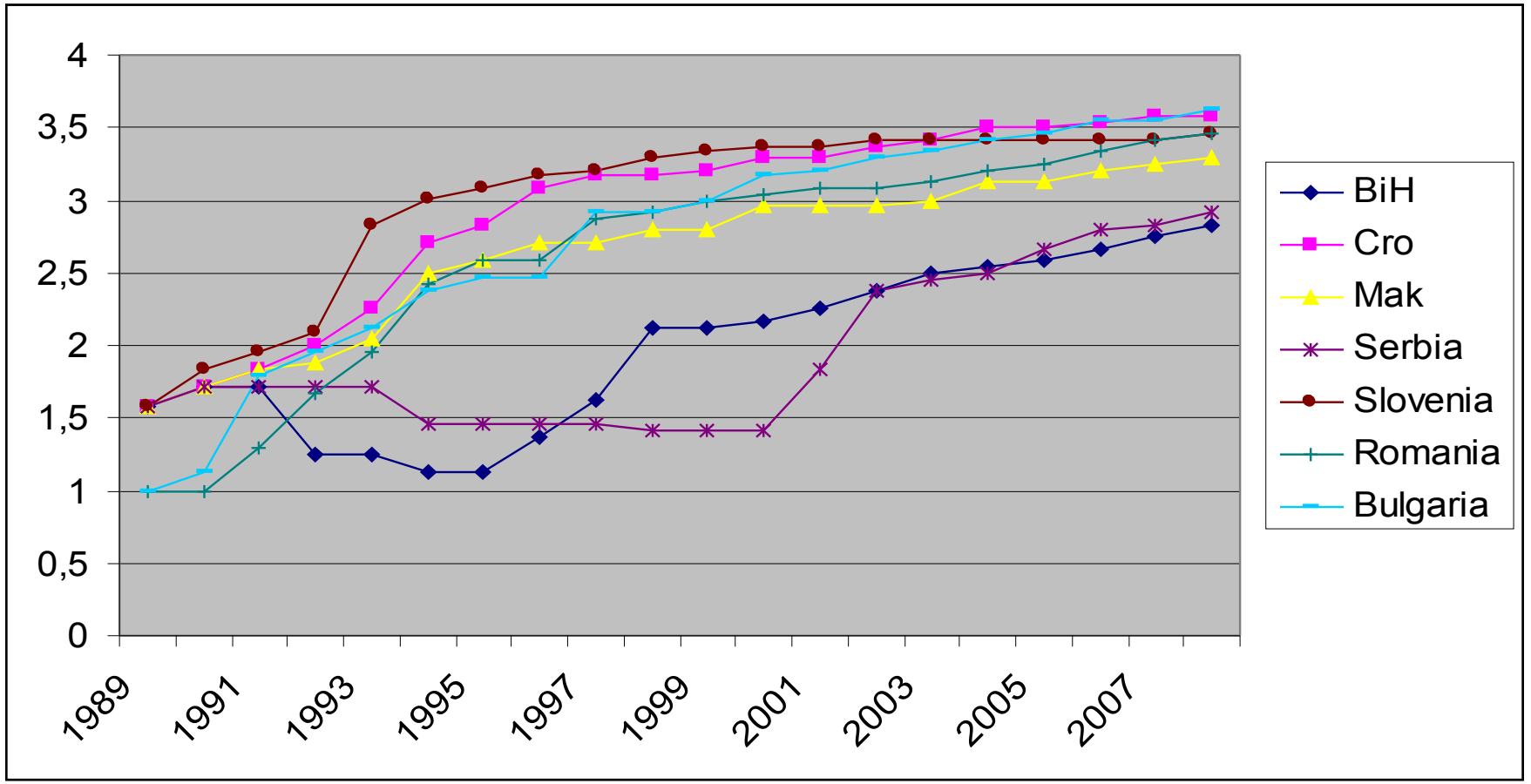


Table 3: "EBRD Scoring of the Reforms in Serbia 1989 – 2008".

	Large scale privatizatio n	Small scale privatization	Enterprise restructuring	Price liberalization	Trade & Foreign system	Competition Policy	Banking reform & interest rate liberalization	Securities markets & non-bank financial institutions
1989	1,00	3,00	1,00	2,67	2,00	1,00	1,00	1,00
1990	1,00	3,00	1,00	3,67	2,00	1,00	1,00	1,00
1991	1,00	3,00	1,00	3,67	2,00	1,00	1,00	1,00
1992	1,00	3,00	1,00	3,67	2,00	1,00	1,00	1,00
1993	1,00	3,00	1,00	3,67	2,00	1,00	1,00	1,00
1994	1,00	3,00	1,00	2,67	1,00	1,00	1,00	1,00
1995	1,00	3,00	1,00	2,67	1,00	1,00	1,00	1,00
1996	1,00	3,00	1,00	2,67	1,00	1,00	1,00	1,00
1997	1,00	3,00	1,00	2,67	1,00	1,00	1,00	1,00
1998	1,00	3,00	1,00	2,33	1,00	1,00	1,00	1,00
1999	1,00	3,00	1,00	2,33	1,00	1,00	1,00	1,00
2000	1,00	3,00	1,00	2,33	1,00	1,00	1,00	1,00
2001	1,00	3,00	1,00	4,00	2,67	1,00	1,00	1,00
2002	2,00	3,00	2,00	4,00	3,00	1,00	2,33	1,67
2003	2,33	3,00	2,00	4,00	3,00	1,00	2,33	2,00
2004	2,33	3,33	2,00	4,00	3,00	1,00	2,33	2,00
2005	2,67	3,33	2,33	4,00	3,33	1,00	2,67	2,00
2006	2,67	3,67	2,33	4,00	3,33	1,67	2,67	2,00
2007	2,67	3,67	2,33	4,00	3,33	2,00	2,67	2,00
2008	2,67	3,67	2,33	4,00	3,67	2,00	3,00	2,00

Table 4: "EBRD Scoring of the Reforms in Macedonia, 1998-2008".

	Large scale privatizatio n	Small scale privatization	Enterprise restructuring	Price liberalization	Trade & Foreign system	Competition Policy	Banking reform & interest rate liberalization	Securities markets & non-bank financial institutions
1989	1,00	3,00	1,00	2,67	2,00	1,00	1,00	1,00
1990	1,00	3,00	1,00	3,67	2,00	1,00	1,00	1,00
1991	1,00	3,00	1,00	3,67	3,00	1,00	1,00	1,00
1992	1,00	3,00	1,00	4,00	3,00	1,00	1,00	1,00
1993	2,00	3,00	1,00	4,00	3,00	1,00	1,33	1,00
1994	2,00	4,00	2,00	4,00	4,00	1,00	2,00	1,00
1995	2,00	4,00	2,00	4,00	4,00	1,00	2,67	1,00
1996	3,00	4,00	2,00	4,00	4,00	1,00	2,67	1,00
1997	3,00	4,00	2,00	4,00	4,00	1,00	2,67	1,00
1998	3,00	4,00	2,00	4,00	4,00	1,00	2,67	1,67
1999	3,00	4,00	2,00	4,00	4,00	1,00	2,67	1,67
2000	3,00	4,00	2,33	4,00	4,00	2,00	2,67	1,67
2001	3,00	4,00	2,33	4,00	4,00	2,00	2,67	1,67
2002	3,00	4,00	2,33	4,00	4,00	2,00	2,67	1,67
2003	3,00	4,00	2,33	4,00	4,33	2,00	2,67	1,67
2004	3,33	4,00	2,33	4,33	4,33	2,00	2,67	2,00
2005	3,33	4,00	2,33	4,33	4,33	2,00	2,67	2,00
2006	3,33	4,00	2,67	4,33	4,33	2,00	2,67	2,33
2007	3,33	4,00	2,67	4,33	4,33	2,33	2,67	2,33
2008	3,33	4,00	2,67	4,33	4,33	2,33	3,00	2,33

18. PROMOTION OF THE OTHER ANCHORING TOOLS

In this chapter we will describe the EU promotion of the anchoring process. What we refer to here is a set of particular norms the EU is promoting in each candidate and potential candidate state, and which main function is the promotion of the anchoring process itself. Here we refer to all those norms and requirements concerning the settling of particular bodies and administration dealing with the matters of the European integration. Even though, as already stressed, such requirements in the EU documents are usually grouped among the "rule of law", democratic political requirements, actually their content does not, in any manner, concern the democratization of the country. These are not the norms of the "democratic rule of law", and actually do not concern the democratization but, in fact, the integration process. We can conceive them as those requirements "opening" the channels to the EU action and thus consider it as the norms aiming to "promote the anchor". The request to develop and strengthen the European integration institutions thus represents an issue that, even though it does not concern the promotion of the political regime, it has an important impact on the whole process as it actually requires the constitution of the new agents with specific agenda and powers, with a particular task to promote the process of integration. As such, these institutions are important agents: continuous contacts with the EU institutions are of particular importance for the process of socialization of the employees in these institutions, while, on the other hand, seen the nature of these bodies, they are supposed to have a role in the decision-making process, being usually given the power to promote solutions that are in line with the European standards.

In this chapter we will also analyze another set of issues, again, not directly linked to the democratization process, but, we might say, to the process of anchoring, this time anchoring with international organizations *other* than the EU. We here refer to all those requirements concerning the adherence to particular regional and international conventions, treaties and organizations, as well as the calls for compliance with the *other* organizations' requirements. In these cases we can conceive the action of the EU as *promoting other anchors for democracy*. We can

thus observe how the EU is using its own influence to increase the country's vulnerability to other international actors promoting democracy. This tactic actually is a win-win for both actors involved in the process. What one actor gains is compliance, while the other obtains the possibility to rely on the first actor's assessment, thus allowing it to spare the necessary resources for the monitoring of compliance. In such way, the organizational capacity of the EU is increased as it allows the EU to rely on the instruments of the other international actors. It becomes interesting to examine the links between the international actors involved in such action, and the conditions making such relations possible. We will, however, tackle this question only superficially, as the space of this work does not allow a more detailed analysis. From the point of view of the model of the international anchoring of democracy, this actually means a joint action of different IAs (with all the complications such joint action implies) and the creation of more than one anchor. It is also theoretically relevant to understand the possible differences between the IA's that are acting jointly, paying particular attention to similarities and differences in interests, capacity and approach.

18.1. Serbia

18.1.1. Request for Constituting the Institutions Dealing with the EU Integration

Since the very beginning of its democracy promotion activity in Serbia, the EU required the establishment of the European integration institutions. At the state level, the Council for European Integration was formed as a high-level political institution supposed to deal with issues related to the integration of SCG into the EU and entitled to monitor and guide the integration office. It was completed by the European Integration Office, acting as a secretariat to the council. The council was composed of nine high-degree political figures, three for each republic and three representing the state union. However, due to rare sessions, the functioning of the council was considered unsatisfactory, a fact that can be explained by both the instability and disfunctionality of the federation (later State Union), and by the lack of influence of the State Union (federal level) on the policy-making process in each of the republics.

On the level of the Republic of Serbia, the parliamentary committee for the European integration was settled in 2003, but, besides having an important symbolical role, the

committee remained inactive. The practice remained that only those issues explicitly concerning the EU integration are discussed in the committee and, seen the prevalence of the executive over the legislative in Serbia, the committee's role is rather limited. Recently the committee's importance in monitoring the process increased as, since the parliamentary resolution on EU integration and adoption of the 2005 strategy for joining the EU, the government regularly submits reports on the activities in that process, and the committee debates on the reports giving its recommendations for further developments. In response to the EU requirements, Serbian European Integration Office was also settled in 2004. According to the government's rules of procedure, every proposed bill must be accompanied by a statement on compliance with the EU standards, which actually gave the office an important role in the decision-making process. The office is entitled to elaborate the action plans for meeting the priorities of the European Partnership, and, on the other hand, to provide all the necessary documents for the SAA reports. The strengthening of the office is also evident from the increase of its budget, that from 0.0037% grew to 0.0098% of the budget share, particularly in 2005 and 2006. However, compared to Macedonian Secretariat for the European Affairs, the financial resources managed by Serbian SEIO are very small (0,207% was Macedonia's Secretariat budget share in 2007, compared to the 0,0098% of the budget resources of the similar body in Serbia).

Generally, the compliance with the requirements concerning the functioning of these structures was praised by the EU. The problem remains still in their rather limited potentials in a setting where the executive, often preferring the non-compliance, is exercising control over the other institutions and branches of power.

18.1.2. Opening up of Other Anchors

In order to understand the relationship between the EU and other international actors active in the country, we will examine the composition and formulation of the priorities (both considered "issues needing attention in the following 12 months" of the first SAA reports, and the priorities of the European partnership with Serbia), trying to understand if, in what terms, how and when the EU was calling for compliance with the IA policy recommendations.

In table 4 (see the appendix) we bring all priorities that required compliance with other IA's recommendations (in bold we find the actors to which the recommendation refers). We can notice that the most often "called" for institution is the Council of Europe that, as we see in

the table, sets the standards, particularly in the dimension of protection of human rights, civil, minority and political rights. In its first reports, the EU was also calling for a more general ratification of the CoE conventions and compliance with CoE accession and post-accession criteria. OSCE was mainly called whenever discussing the reform of the electoral system, while the proposal of the Center for the Control of Armed Forces based in Geneva was adopted by the EU as the framework around which the army reform shall be undertaken.

We can observe that in these cases, the support for the parallel democracy promotion process undertaken through other actors represents the use of these other actor's capacities and infrastructures in pursuing the same goals. Thus, for example, in the field of the electoral or army reform, the EU is not putting forward its own priorities other than those made by the other IA. This becomes even more obvious in the SAA reports, written in reference, among other, also to the reports issued by CoE, OSCE and other IA, and where the data on compliance provided by these actors are used as a reference and their recommendations are underlined.

We can also observe how the EU is usually supporting the actions of other *regional* supranational organizations, and does not refer to the possible democracy promotion strategies of other, globally active international actors. Thus USAID or NATO for example, both very active actors in promoting, among other, the democratization in the region, are not relied upon by the EU neither are presented as "joint partners" in the EU democracy promotion efforts. This prevalence of cooperation between regional supranational organizations might be a product of the particular linkage between these organizations through a joint membership and the similarities of their agendas. Thus, we can often read of the "EU and CoE standards", the two institutions being used together more as a "fix phrase", and the term "European standards" leaves it unclear weather it refers to the CoE or to the EU. However, it is interesting to underline that, while in the EU documents we find the imagine of the "European template", where all regional supranational organizations are conceived as a system or a net, in the reports of the Council of Europe no such discourse is present, even though the opinion on the CoE as an antechamber of the EU membership was reported[592]. This clear distinction between CoE and EU in the CoE official documents becomes evident in the analysis of the CoE country reports. Not only are the calls for the compliance with the EU priorities absent from these documents, but moreover, the European

[592] Thus Jovanovski, director of the CoE office in Skopje, in the interview made by the author in August 2008, underlined how the main role of the CoE was to prepare the country for the EU integrations.

Union is only sporadically mentioned, there is no evaluation of country's compliance with EU priorities, neither are there requirements for further integration. There appears to be a clear accent on the "separation" of the two institutions, the Council of Europe being a unit that, beside some joint projects with the EU, namely through the European Reconstruction Funds, does not have much in common with the EU integration process. In this light it appears interesting to underline that while in Serbia there is a strong anti-EU integration campaign, the membership in CoE is asserted as positive even by the most radical ultra-nationalists. The levels of legitimacy between the two appear to differ, EU being more controversial, mainly due to the "requirements, conditioning, bargaining" the process of integration brings. The difference in the levels of legitimacy also derives from the basis of their legitimacy: being a much more "inclusive" institution, and thus having in its lines also members that are not part of the EU, the CoE is perceived as a less "western" and thus less antagonistic actor than the EU. Due to this, the tendency to keep separated the own identity, requirements and obligations from those of the EU we registered above is a part of the CoE's need to underline its independency from the "European powers" and its unique, separated identity.

As far as the regional cooperation is concerned, the EU promoted the creation of the CEFTA (Central Europe Free Trade Agreement), good bilateral relationship between neighbouring states and the participation to the regional organizations. These issues, particularly the creation of the free trade agreements of the Balkans and the regional integration, were perceived as a mean for faster economic development and the settling of the consequences of the Balkan wars.

The explicit call for the respect of such particular requirements where, rather than relying on the other IA's norm promotion instruments, the EU used its legitimacy to ensure Serbia's compliance concerning the cooperation with the ICTY, as well as the respect for the UNSC Resolution 1244. These issues' particularity is that, unlike the CoE requirements on protection of the human rights or OSCE recommendations concerning the elections, in these cases we have the security and stability of the region at stake. As such, and seen the resistance they caused in the country, we will dedicate separate paragraphs to these problems.

18.2. Macedonia

18.2.1. Request for Constituting the Institutions Dealing with the EU Integration

Due to the rather early developments of the country's relations with the EU, the establishment of the institutions dealing with the process of the EU integrations in Macedonia began already in the Nineties. In 1997, the adoption of "The Strategic Basis of the Republic of Macedonia on Achieving the Membership of the European Union" opened the process of building the institutional network of units empowered to deal with the Macedonian process of the EU integrations. The deputy Prime Minister for the European Integrations was appointed and a series of bodies were formed: the Committee for the Euro-Atlantic integrations (composed by the Prime Minister, Deputy Prime Ministers, a number of ministers, the Governor of the Central Bank and the president of the Macedonian Academy of Arts and Science), the Working committee for the European Integrations within the Government of the RM (Deputy Prime Minister charged for the EU integrations, minister of economy, and all vice-ministers as members) and the Sector for the EU integrations within the Ministry of Foreign Affairs, as a body coordinating the activity of all other bodies and entitled for the political part of the communication and coordination of the process[593]. By 1999, in each ministry a Unit for the European Integrations was formed.

The process of building up and strengthening the administration entitled to prepare the Macedonian EU integration continued, with the Sector of the EU Integrations as the main domestic promoter of the process, and EU as its external partner. After a series of recommendations made in the 2002 and 2003 EU Commission reports, mainly requiring the strengthening and better coordination of the different units dealing with the process, the government adopted an Action Plan in June which translated SAP recommendations into 216 activities and also defined the bodies responsible for their implementation, adopted the National Program for the Approximation of Legislation, established the Working Groups for the Harmonization of the Legislation with the "*community acquis*" and strengthened the role of

[593]Vlada Republike Makedonije, 1998, "Informacija za Sistemot na upravuvanje i koordinacija na procesot na evropska integracija vo Republika Makedonija, i Sistemot na upravuvanje so nacionalnata koordinacija na stranskata pomoš, kako komplementaren so procesot za evropska integracija, so Predlog za vospostavuvanje na institucionalna infrastruktura za upravuvanje i koordinacija na procesot na evropska integracija", Skopje.

the Legislative Secretariat. A Statement on Compliance with the EU Legislation was prescribed as the obligatory attachment of each draft legal text submitted to the Government.

A further step in strengthening the administrative capacity in the field of the EU integrations took place in 2005, when the Sector for the European Integrations was turned to the Secretariat for the European Affairs, which had a central role in coordinating the progress in the EU integration objectives. The Secretariat was allowed its own budget, marking an increase of 300% of the funds for its functioning and doubling its participation to the overall state budget share (see the table in the appendix). Following the EU criticisms expressed in the 2007 report, where the lack of human and financial resources to implement the SAA and the National Program for the Adoption of the acquis, the government proceeded in 2007 with re-structuring the Secretariat for the European Affairs and its strengthening through an increase almost by double of the number of its employees.

18.2.2. Promotion of Other Anchors

In Table 3 we bring a list of EU's calls for compliance with the recommendations of the other international institutions active in Macedonia. Similarly to what happened in Serbia, here again we can notice the prevalence of the European regional organizations, Council of Europe and OSCE being the most important EU partners in the democracy promotion in Macedonia. While present in the field of the protection of Human and Minority rights, the Council of Europe and the "European standards" are less called upon in the EU recommendations in Macedonia than in Serbia. Such finding is partially a result of the Macedonian early integration in the CoE, as the country became a member already in 1995, seven years before Serbia. Moreover, the widespread support for the Macedonian membership in the EU, the high EU leverage in Macedonia and the importance of the EU in the process of peace building in Macedonia also contributed to decrease the EU's need to rely on other actors. It is however interesting to underline the different levels of engagement of the Council of Europe in Macedonia during the Nineties and after the 2001 violence. In the analyzed chapters we underlined the importance of this actor during the '90s, when, especially in the field of the human, political and civil rights, this organization played an important role in the rule promotion. Since 2001, however, the importance of this organization in Macedonia appears to diminish, mainly due to the negative approach of the domestic decision-makers and their concentration on the EU requirements. In the interview with the responsible of the CoE office in Macedonia, Jovanovski reported the rather difficult compliance of Macedonian

authorities and the lack of cooperation with the Council of Europe, explaining such situation with the lack of democratic potentiality of the Macedonian political elite. As the CoE is mainly interested in the democracy promotion, and as it acts through the social influence and socialization channels rather than conditionality, the Macedonian authorities showed a negligence towards the recommendations coming from the CoE, particularly those that are directly tackling the government's interests. This is also evident in the Macedonian approach to the CoE monitoring process. Only a few reports of Macedonian compliance with the CoE standards are available, mainly due to the Macedonian authorities refusing to accept and publish these reports (according to the regulations of the CoE, the country's approval is necessary in order for the report to be adopted). The monitoring was finished in 2004, as the opinion prevailed that Macedonia mainly fulfilled its obligations deriving from the CoE, a decision that, according to Jovanovski, neglected the low respect for the rule of law and inadequate implementation of the rules adopted in Macedonia.

APPENDIX

Table 1: "Budget share of Serbian European Integration Office". (in millions of dinars)

	Budget share	Budget	Budget share %
2004	13555	362045252	0. 0037
2005	36245	429764926	0. 0084
2006	53480	548405821	0. 0098
2007	63668	646466666	0. 0098

Source: Budget of Republic of Serbia, 2004, 2005, 2006, 2007.

Table 2: "Budget share of the Macedonia Secretariat for European Affairs" (in millions of denars)

	Budget share	Budget	Budget share %
2004	51461	66666000	0,077
2005(evropska integracija	59119	66538469	0,089
2006	150172	81749000	0,183
2007	164694	79522497	0,207
2008	168000	89397520	0,188

Source: Budget of Republic of Macedonia, 2004, 2005, 2006, 2007.

Table 3: "EU promotion of other anchors in Macedonia".

2002	Adapt electoral legislation in line with **OSCE/ODHIR** recommendations before the next Parliamentary elections in 2002, and enforce implementation. Strengthen legal and constitutional guarantees on freedom of expression in line with the **European Convention on Human Rights**. Downsizing of the Public Administration as agreed with the IMF.
2003	Strengthen legal and constitutional guarantees on freedom of expression in line with the **European Convention on Human Rights**. The authorities should maintain a consistent macroeconomic and fiscal framework in agreement with the **IMF** and fully implement the programme agreed with the Fund.
2004	Ensure full compliance with the European Convention on Human Rights, the Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment and other relevant international conventions. Review the legislation on defamation to reflect European standards and the jurisprudence of the **European Court of Human Rights** Adopt an appropriate legal framework on cooperation with the **International Criminal Tribunal for the former Yugoslavia.**
2006	Implement the recommendations regarding the electoral process made by the **OSCE-Office for Democratic Institutions and Human Rights** in time for the next elections. Adopt the constitutional amendments needed to implement the reform of the judicial system, in line with the recommendations of the **Venice Commission.** Fully implement the recommendations of the Group of States against Corruption (GRECO). Fully comply with the European Convention on Human Rights, the Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment and other relevant international conventions. Promote respect for and protection of minorities in accordance with **the European Convention on Human Rights** and the principles laid out in the **Council of Europe's Framework Convention for the Protection of National Minorities**, in line with best practice in EU Member States.
2007	Implement fully the recommendations made by the **Group of States against Corruption (GRECO)**. Fully comply with the European Convention on Human Rights, the recommendations made by the Committee for the Prevention of Torture as well as the Framework Convention for the Protection of National Minorities. Continue to cooperate fully with the **ICTY** and, in view of the possible return of files from the ICTY, meet all the necessary preconditions that would ensure due process. Continue to promote the transition from the **Stability Pact** to a more regionally owned cooperation framework and effective implementation of the **Central European Free Trade Agreement (CEFTA).**
2008	Implement fully the recommendations made by the **Group of States against Corruption (GRECO)**. Fully comply with the European Convention on Human Rights, the recommendations made by the Committee for the Prevention of Torture as well as the Framework Convention for the Protection of National Minorities. Continue to cooperate fully with the **ICTY** and, in view of the possible return of files from the ICTY, meet all the necessary preconditions that would ensure due process. Continue to promote the transition from the **Stability Pact** to a more regionally owned cooperation framework and effective implementation of the **Central European Free Trade Agreement (CEFTA).**

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, Accession partnership with Macedonia, author's elaboration.

Table 4: "EU promotion of other anchors in Serbia".

2002	Reform of electoral laws and provisions, a priority recommendation of the **Council of Europe**, should be brought into line with **Council of Europe and OSCE** standards by autumn 2002. Army reform - including security policy, the role of the army and secret services, civilian control, general modernisation/ restructuring, and budgetary issues, in line with the proposals by the **Geneva Centre for Control of Armed Forces** - should be under way by the end of 2002. Reform of the security and police services should continue, transforming them into a service, adopting the **Council of Europe's Police Code of Ethics**, bringing them under clear internal and external control and improving coordination between the various services and with other state services. State security and law enforcement agencies must be separated. Prisons must be urgently brought in line with **Council of Europe** standards. Legislation on minority rights, including relevant changes to Criminal and other Codes in line with the **Council of Europe Framework Convention for the Protection of National Minorities** (in force September 2001), should be urgently adopted and implemented. Cooperation with **ICTY** should improve. Indictees should be surrendered to the Hague - including and particularly those currently holding elected office or military positions. On the federal level, an agreement with **London Club** debtors is required, and an intra-FRY agreement on the internal split of the debts (both regarding the **London Club** and the **Paris Club**, as well as **World Bank** must also be reached, as well as an agreement on the management of these debts.
2003	Urgent implementation of army reform in line with the proposals by the **Geneva-based Centre for the Control of Armed Forces**. Continued legislative reform and implementation regarding the police services, reducing their size and transforming them into a public service under clear internal and external control and accountability, with improved co-ordination between these and other state services, adopting the **Council of Europe Police Code of Ethics**. Police to be urgently brought into line with **Council of Europe** standards. Real progress in alignment with European (EU and **Council of Europe)** standards, even before **Council of Europe** accession. Ratification of the **European Convention on Human Rights and Fundamental Freedoms**. Implementation of the new constitutional arrangements in such a way as to provide for the full respect and protection of minority rights throughout the country, in line with the **Council of Europe Framework Convention for the protection of national minorities**. Improved co-operation with **ICTY** in all regards.
2004	Complete the ongoing electoral law reform (including electorate register) to bring the electoral system up to international standards notably by revising electoral laws, in line with the **Office for Democratic Institutions and Human Rights** recommendations and fully implementing legislation on financing of political parties. Fulfill all short term obligations arising out of membership of the **Council of Europe** including uniform effective implementation, throughout the State Union, of **European Convention on Human Rights and Fundamental Freedoms and European Convention for the Prevention of Torture**. Adopt law on free access to information, in line with **Council of Europe** standards. Ensure full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Continue efforts with a view to come to an agreement with commercial creditors (**London Club**) on debt restructuring.
2006	Ensure full cooperation with International Criminal Tribunal for the former Yugoslavia (ICTY). Complete the reform of the electoral law reform (including electoral register), in line with the recommendations of the **Office for Democratic Institutions and Human Rights**; fully implement legislation on financing of political parties. Fulfill all remaining obligations arising out of membership of the **Council of Europe**. Ensure uniform effective implementation of these obligations, throughout the State Union, notably with regard to the **European Convention on Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture**. Continue to make the necessary adjustments to Serbian trade regime, to render it compatible with the autonomous trade measures, the **WTO** rules and the future

	SAA.
2007	Ensure full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Create an IT network for prosecutors at all levels, ensure enforcement of court decisions and further strengthen the capacity to try war crimes domestically in full compliance with international obligations to the **ICTY**. Fulfill all obligations arising out of membership of the **Council of Europe**. Contribute to strengthening regional cooperation, reconciliation and good neighborly relations, including by promoting the transition from the Stability Pact to a more regionally owned cooperation framework and effective implementation of the **Central European Free Trade Agreement (CEFTA)**. Adjust the trade regime and relevant legislation to comply with obligations stemming from the **WTO,** SAA **and CEFTA**. Ratify the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Continue preparations for accession to the **WTO**.
2008	Ensure full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Create an IT network for prosecutors at all levels, ensure enforcement of court decisions and further strengthen the capacity to try war crimes domestically in full compliance with international obligations to the **ICTY**. Fulfill all obligations arising out of membership of the **Council of Europe**. Contribute to strengthening regional cooperation, reconciliation and good neighborly relations, including by promoting the transition from the Stability Pact to a more regionally owned cooperation framework and effective implementation of the **Central European Free Trade Agreement (CEFTA)**. Adjust the trade regime and relevant legislation to comply with obligations stemming from the **WTO**, SAA and **CEFTA**. Continue preparations for accession to the **WTO**.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia, author's elaboration.

19. UNSOLVED ISSUES AND RELATED REQUIREMENTS

What we will consider as "other" political requirements refers to those issues that are not part of the democracy promotion, but that still represent an important (in some cases even crucial) requirement in the process of integration. These can refer to any area of policy that does not concern the political regime directly (but such requirements most commonly concern the state's foreign policy). Here we refer to all those interventions where the EU is seeking to use its influence to help countries solve possible disputes with other states, or to push them to fulfill their international obligation. These issues usually differ from one country to another, in light of the national particularities. In Serbia's case, the cooperation with ICTY and the Kosovo status are of particular importance. In Macedonia's case, the name dispute with Greece is of the highest importance.

There are two theoretical reasons for considering these issues separated from the democratization process. First of all, these "other political issues" are not directly and explicitly linked to the dimensions we identified as those important for assessing the level of democracy, so they will not be part of our dependent variable. But this does not mean that they are irrelevant for understanding the process of the democratization and EU integrations of the country. Rather contrary, with the costs and benefits for the state and single actors deriving from the compliance with these requirements, they represent an important dimension in the process of international anchoring and might significantly influence both the country's democratization process and its relationship with the EU. In such light, the Serbian example is highly important.

Another particularity of these issues is the lower level of the EU's potential to use the socialization as a strategy for promoting these issues. While the EU and its Member States are widely accepted as an inspiration for democracy and represent one of the most credible actors capable to promote democratic values, the legitimacy of the EU when, for example, dealing with the Kosovo issue or the name dispute in Macedonia is far lower. This lack of legitimacy to influence what is often perceived as the country's internal matters significantly diminishes

the EU's action capacity, as the strong pressure on these issues can harm the relations between the EU and the country in question. As a consequence, the use of the conditionality in these dimensions is also hampered. This is rather evident in the case of the Kosovo status problem and Macedonia's name dispute, as in no official stances the EU formulated a clear, unambiguous recommendation that would express its preference. We can thus read how the EU requires Serbia and Macedonia to be "cooperative" on these dimensions, leaving aside what the "cooperative" behavior in a situation of threatened territorial integrity or denied national identity actually mean. In this section we will therefore examine the development of these particular issues, reflecting on the impact of the EU engagement in these areas on the overall process of anchoring.

19.1. War Crimes and Territorial Sovereignty in Serbia

19.1.1. Cooperation with ICTY

The full cooperation with ICTY is one of the most difficult issues in the process of the integration of Serbia and, as we will later argue, it is the issue that brought significant costs to the process of democratization of Serbia as well.

Serbia's obligation on cooperation with ICTY derived both from the FR Yugoslavia (now Serbia)'s membership in the UN, as well as from the Dayton peace agreement. No need to mention that such cooperation never took place during Milošević's period. Even though Milošević himself accepted Serbia's recognition of the tribunal, the regime adopted a negative approach towards the ICTY claiming its politicization. It could be heard that the tribunal was put in place especially in order to prosecute Serbs and as a mean of political pressures on Serbia. The prevalence of Serbian indictees (more than half of the about 160 charges in front of ICTY are against Serbs, the other half is distributed among Bosnians, Croats, Macedonians, Albanians and a few Montenegrins) was used as an evidence of the tribunal's politicization and anti-Serbism.

The fall of Milošević brought the pro-democratic, pro-western elite to power, and the international pressures for the cooperation with ICTY substantially gained strength as the new ruling elite's foreign policy was oriented towards the full integration of Yugoslavia (and thus Serbia as well) into the international community (membership in several regional and international organizations included).

Very soon the new elite was forced to cope with the problem of the ICTY, causing a sharp conflict in the country on the matter: while the CoE, EU, NATO, all the international community was pressing Yugoslavia, and in particular Serbia, to fulfill its international obligation[594], at the same time the indictees, once the key persons of Milošević's regime, were still controlling significant portions of power (through the presence of the ancient-regime supporters in the lines of the judiciary, police, administration, military etc), successfully avoiding such cooperation and lobbying against the compliance with the IA's requirements. They used their influence to delegitimize the court, mobilize the nationalist rhetorics against the international pressures, undermine the pro-western political elite, and mobilized the losers of the political and economic transition to gain electoral support and increase their political influence.

The first years of transition were thus characterized mainly by postponing the cooperation, by delaying the establishment of the necessary legislative framework and obstructing its implementation. Some of the indictees even maintained their office, occupying the highest positions in the country (the case of the Serbian president Milutinović and the Chief of Staff Nebojša Pavković are the important ones). In 2001 the former president Milošević was arrested and charged in front of the Serbian court of abuse of power and corruption, and in order to avoid the use of violence and solve a difficult situation that saw the security forces involved in defense of Milošević during the arrestment, the new ruling elite gave Milošević the guarantee that no extradition to Hague would take place[595].

A few months after his arrestment, Milošević was transferred to Hague, on the secret order of Serbia's Prime Minister Đinđić, a decision that would bring to the dissolution of DOS coalition. The Yugoslav president Kostunica, known for his "soft, negotiated-transition legalistic approach" was not even informed of the transfer[596]. The transfer caused the fall of the federal government and the crisis of the institutions of the state union, as, on the federal level, the opponents of ICTY enjoyed a substantial support, both due to Koštunica's role as

[594] On the international pressures on Serbia to cooperate with ICTY see Begović ad Đilas, 2005.

[595] The negotiations on Milošević's arrestment were undertaken by Čedomir Jovanović, at time the vice-prime minister of the government of Serbia and one of the leaders of DOS. In the interview with B92, Jovanović revealed the details about Milošević's arrestment and the negotiations. See: http://www.b92.net/info/emisije/insajder.php?yyyy=2005&mm=04&nav_id=166741.

[596] Among the causes that brought DOS to the end, Goati mentions: Kostunica's malcontent with the division of the power that saw him controlling fewer functions in the republican government even though he enjoyed large support from the electorate, the discrepancy of the vision of transition and in particular on the issues of the ICTY and decentralization. The extradition of Milošević was a direct cause that brought to this conflict to burst. See Goati, 2006.

the president, as well as due to the pro-socialist, pro-regime, pro-Yugoslavia Montenegrin coalitional partner (SNP)[597].

The international community continued exercising pressures for the cooperation, normative as well as financial, with ICTY, which created inner conflicts as the new ruling elite was eager to ensure the integration into the international community, while the strength of the ancient regime forces and their activities were significantly increasing the political costs of compliance. The centrifugal dynamics of the international and domestic pressures resulted first in the breaking of the DOS ruling coalition and the conflict between the two strongest parties and two most important leaders, Đinđić and Koštunica. Such break, combined with the political struggle it produced, was condemned by the Serbian electorate, traditionally considered too much sensitive to the conflict within the "democratic block" (see Goati, 2002). The result was the loss of the electoral support, the growth in the political apathy and abstinence, and, consequently, the increase of the relative strength of the ancient regime forces (see Mihajlović, 2002; Goati 2002; Golubović, 2003). At the same time, the difficult financial situation deriving from the economic transition and "shock" approach adopted by Đinđić (see Goati, 2002), combined with the too high, almost unrealistic expectations from transition (Mihajlović, 2002), brought disappointment in the democratic parties. The ancient regime supporters used the moment to seize support through a two-fold tactic: changing the demagogy from communist/socialistic to nationalistic rhetorics[598], and re-opening the national question, this time pointed against the international community, accused for its hostility against Serbia. The following arguments were used to support the thesis of the Western hostility towards Serbia: the IC's approach to the war in Croatia and Bosnia (support to Bosnians and Croats), the IC's approach to the war in Kosovo (support to the Albanian minority), NATO intervention in Serbia 1999, the "de-nationalization" of Serbian property through the process of privatization where the foreign investors were accused for actually destroying the Serbian economy and are accused to be a cause of the difficult economic

[597] On the conflict Koštunica – Đinđić during Milošević's arrest and extradition, see the interview of B92 with Čedomir Jovanović, at the time the vice-prime minister of the government of Serbia and one of the leaders of DOS, available at: http://www.b92.net/info/emisije/insajder.php?yyyy=2005&mm=04&nav_id=166741.

[598] Here we shall underline that while Milošević's regime did use nationalism to strengthen the executive and remain in power, however, its basis of legitimization have never become clearly nationalistic. The regime, among other things, lost its power *also* because it lost the votes of the ultra-nationalists, who accused the regime of not protecting the Serbian national interests, for withdrawing from Croatia, for withdrawing the army from Kosovo and settling the peace agreement with NATO. That the ancient, "socialist" regime opted for nationalism as the new rhetorics is reflected in Milošević's support to the SRS' president Šešelj on the 2003 presidential elections, and it was also revealed in the analysis of the voting behavior that showed that both SRS and DSS have attracted SPS voters (Mihajlović, Goati,).

situation, and, finally, the pressures to cooperate with ICTY, a politicized tribunal settled up to prosecute Serbia[599]. The delegitimization of the international institutions and community was an answer to the international community's (unsuccessful) attempt to delegitimize the "national heroes and patriots".

The support of the security sector given to these parties was further complicating the issue by opening a constant treat of escalation of violence in case of more decisive measures. When, after transferring Milošević, two members of the units for special tasks (JSO) were transferred to The Hague, the unit's armed protest made the limits of the new democratic power clear. Officially, the unit was protesting against the "unlawful" transfer of indictees and was requesting the adoption of a law that would regulate the matter. Actually, the unit was requesting the amnesty for its members, and further obstructing the process[600].

The Law on Cooperation with ICTY was declared to be the necessary condition in order to transfer the indictees, as the federal constitution appeared not to allow the extradition of Serbian citizens[601]. Such legislation was to be adopted on the federal level in the assembly where the distribution of forces respected both the republics' inner conflict and the conflict between the constitutive nations. The particularity of the situation was represented by the fact that the Montenegrin pro-western parties were at the same time the independence-seeking, anti-Yugoslavia Đukanović's party that, in sign of protest against the "Serbian control over Montenegro", withdrew its deputies from the federal assembly. The federal government was thus composed of the Serbian DOS (DSS included) and a pro-socialist, pro-Yugoslavia Bulatović's SNP, known for its support to Milošević. The opposition to the ICTY thus almost enjoyed the veto power on the federal level, where Koštunica's insistence on the solid constitutional basis for compliance was combined with the obstruction of the rule adoption and change of status quo[602].

The law was finally adopted in 2002, on the pressures of the international community, and in an effort of fake compliance in order to avoid serious financial consequences. Not only the US aid, but also 15.000.000 USD World Bank credit to Yugoslavia were said to be unblocked by such rule adoption. The law represented a clear case of fake compliance and was a product

[599] See "Velika Srbija", journal of the Serbian Radical Party.

[600] On the protest of the JSO and negotiations of the government with the paramilitary unit, see the interview of B92 with Čedomir Jovanović, at time the vice-prime minister of the government of Serbia and one of the leaders of DOS, available at:
http://www.b92.net/info/emisije/insajder.php?yyyy=2005&mm=04&nav_id=166741.

[601] For Kostunica's argumentation on the necessity of such law, see
http://www.b92.net/info/vesti/index.php?yyyy=2002&mm=04&dd=02&nav_id=57788.

[602] See http://www.b92.net/info/emisije/insajder.php?yyyy=2005&mm=04&nav_id=166741.

of complicated three-level negotiations (in Serbia, in Montenegro, and then on federal level). The Montenegrin SNP even conditioned their support for the law with Đukanović's support for the union with Serbia[603]. On the federal level, the SNP required that the provision limiting cooperation only to the already indicted is included, while the DSS asked for the "formation on the federal level of a national council controlling the ICTY access to the state archives, in order to defend the national sovereignty and dignity". The law was finally adopted, with only limited effects being produced, while the international pressures for compliance were constantly growing.

The first period in which the government was balancing between the international community and domestic pressures ended with the death of the Prime Minister Đinđić, the ancient regime and ICTY indictees being accused for both his assassination and the political background of the murder[604]. In 2003, the state of emergency was used by DOS to change the legislation and transfer some of the indictees. Yet, it was again due to the strong international pressures and conditionality linked with the financial assistance. In the second half of 2003, new charges were published against some of the high-rank officials that resulted in the open refusal to comply from the authorities.

The parliamentary elections in 2003 saw the change in favour of both the nationalists (SRS) and the "soft" nationalists (DSS). The formed government was composed of forces interested in avoiding the cooperation with the ICTY as much as possible, leaving the issue out from the list of the government's priority. The support of the socialists to the minority government was a clear sign of the new approach based on the negotiation with the ancient regime and the compliance that took place was a product of the strong international pressures, mainly financial, but also normative, as, in that period, the parties that entered the coalition embraced the EU integrations at least as an officially proclaimed goal[605]. The approach to the issue changed. Instead of the internal conflict between change agents and veto players present in the government, one pushing for full compliance, the other towards non-compliance, Koštunica's government adopted the approach of the voluntary transfers based on the negotiations with the ancient regime forces. The indictees no longer were war criminals of the "ancient regime", but citizens who, being accused in front of the international tribunal, were called to surrender as patriots and, in exchange, they would be given the state's protection,

[603] Interview with Bulatović, Vjesti, 03/06/2002.
[604] See for example Gow, 2005.
[605] See Gow, 2005. See Helsinki Report for Serbia, 2005.

guarantees and assistance. The state was producing incentives both in the protection of property and care for the family members, and it offered guarantees, financial and technical assistance for all those indictees that decided to surrender to the tribunal. The result came with relatively positive reports of the ICTY on cooperation as a product of the "voluntary surrender" approach, but, as time passed and the approach reached its limits, the international pressures re-emerged.

The ICTY prosecutor continued accusing Serbia for hiding the "most wanted", Karadžić and Mladić, while Serbian authorities were trying everything possible to avoid the responsibility by underlining that the government was doing "everything possible" in order to ensure full cooperation with ICTY.

The international pressure for Karadžić and Mladić's surrender was constantly growing, and the EU settled the deadline in several occasions, after which the EU would suspend the negotiations with the State Union. Belgrade was delaying the compliance as long as possible, first by designing the "national strategy", then through the rule adoption and IAC developing, promising and requiring further time. Finally, in May 2006, the EU fulfilled its threat and the SAA negotiations were suspended due to the lack of cooperation with ICTY. This brought to the crisis of Koštunica's government, and, according to some authors, it also significantly influenced the independence referendum in Montenegro and the constitutional reform in Serbia. Indeed, the referendum on the independence of Montenegro (a rather delicate issue seen the inner conflict between the forces requiring independence and those supportive for the State Union of Serbia and Montenegro) was settled for May 2006, and the EU integrations were one of the important arguments the supporters of independence used for advocating the secession.

In 2007 we register another important shift in the trend, this time due to the change of the international actors' approach. Seen the political crisis in the first half of 2007, the threat of the creation of an anti-western government, the growing nationalism and the crisis over Kosovo's final status, the EU significantly diminished the importance associated to the ICTY issue, and re-opened the negotiations even though the surrender of Karadžić and Mladić did not take place. The SAA and cooperation with ICTY were surely "goods exchanged" between the domestic elite and the EU during the political crisis over the government formation and EU's unofficial pressures for keeping nationalists out of the game. The new government included the cooperation with ICTY among its priorities, a few days after some of the

fugitives were arrested and transferred, and the SAA negotiations were re-opened. It was clear that the EU decided to neglect the ICTY and "consider Serbia's efforts as sufficient" from the dissatisfaciton of the ICTY's prosecutor' Del Ponte with the re-opening, and later the signature, of the SAA agreement between Serbia and the EU. However, on the insistence of the Netherlands, full compliance continued to be the key requirement for Serbia: the SAA, even though ratified, is still not implemented, waiting for Serbia to fulfill its obligations towards ICTY. This brought to the arrestment of Karadžić in summer 2008, but still was not enough to open the door for the Serbian integration, as Mladić is still free and the ICTY claims that he is hiding in Serbia.

19.1.2. The Impact of the ICTY on the Serbian Process of Democratization and European Integration

What was then the impact of the ICTY on the Serbian democratization and its relations with Brussels?

The Serbian obligation to cooperate with the ICTY had a particular effect on the distribution of the costs and benefits in the democratization and boundary removal process. Concerning the old-regime elite, the necessity to cooperate with the ICTY increased the costs of the regime change. In the first place, this elite's interest in the field of the Serbian foreign policy was determined by the Western insistence on the extradition of the indictees. The foreign policy oriented towards the west became unacceptable for the old elite exponents, fearing not only the loss of power and influence, but even the loss of freedom and condemnation for the rest of their lives. Indirectly, this also increased their costs from the democratization process, as democratization meant a potential shift in the external policy. According to some authors, the main preoccupation of Milošević in 1999 – 2000 and the increase of the oppression he used in maintaining the regime derived precisely from the concerns related to the ICTY: for Milošević the loss of power also meant the loss of freedom, and this sealed his struggle to maintain the regime at any cost[606]

[606] Goati thus argues: "The electoral debacle of Milošević at the presidential elections and the SPS-JUL coalition at the federal elections first of all caused a shock-wave amongst the leadership of the ruling order and then, quite expectedly, desperate attempts, which lasted from the 25th September to the 5th October 2000, to cover up Milošević's defeat. We say "quite expectedly", as the people at the head of Serbia's authoritarian order had become so deeply steeped in violence that the loss of power inevitably meant facing criminal and civil legal charges. On top of all that, the International Tribunal in The Hague had brought charges against Milošević and his closest associates in May 1999, and the defeat at the elections meant their probable extradition to that Tribunal" (Goati, 2001, p. 55).

The insistence on the cooperation with the ICTY made it impossible for Serbia to undertake a path of negotiated transition to democracy, a path that in the politological literature is considered the safest way for the newly established democratic regimes in the context where the old forces maintain a certain influence[607]. In Serbia's case the international actor, by requiring the prosecution of the ancient regime elite for the war crimes, intervened with what at the beginning was supposed to be the negotiated process. In front of the international pressure backed by strong financial conditionality, the domestic pro-reformist forces did not have any choice.

The conflict between Đinđić and Koštunica, and, more generally, the conflict between two types of transition (continuity vs. discontinuity), was brought onto the agenda sooner than it was recommendable. This is not to say that DOS coalition would have survived, as the animosities between the two leaders and the differences between their visions were already present[608]. But the external insistence on what was the most conflictive issue of Serbian transition brought the problem onto the agenda in a particularly sensitive moment. In 2001, Serbia had a series of reforms ahead, and the pressure to deal with its past and justice brought to the conflict that resulted in the stagnation of the reforms we described in the previous chapters (see in particular the reform of the judiciary and the security sector, two fields most influenced by the issue).

The international insistence in promoting the cooperation with the ICTY not only brought to the conflict in the line of the democratic forces, but also indirectly brought to the re-awaking of the nationalistic rhetorics[609]. In their effort to shift Serbia's foreign policy and diminish the external pressure for the extradition, the "anti-Hague lobby", as it was called, seizing the wave opened by the conflict in DOS, used the still open problem of the Kosovo status (see next section) for delegitimizing the international community. They succeeded in attracting the support of the losers of the transition, increasing the electoral strength. This brought to the re-emergence of the strong anti-EU block on the extreme right of the political spectrum, increasing the level of polarization of the party system and significantly strengthening the central actor: Koštunica's DSS. The strengthening of the anti-EU forces,

[607] See Linz and Stepan, 1996.

[608] As Jovanović said, already in the evening of the 5th October it was clear the discrepancy of their visions was obvious.

[609] As Begović and Đilas underline, "the continuous requirements of the ICTY, the radical rhetorics of the ICTY officials and its un-functionality brought to the strengthening of those Serbian political forces that were against the international integration of Serbia" (Begović and Đilas, p.338, translated by the author). On the ICTY and its inefficiency as one of the factors that brought to the rise of the nationalists, see also Gow, 2005.

combined with the EU strategy of influencing the domestic distribution of power and delegitimization of the nationalists, not only sealed Koštunica's central position towards the other domestic political actors, but, as we will see in the next section and as we will argue in the conclusive chapter, it also strengthened Koštunica's bargaining power towards the international community. It also created the structural incentive for Koštunica to "flirt" with the nationalistic powers, forced to move always closer to them in order to make his nationalistic orientation more credible. The gradual increase of Koštunica's nationalism, that can be followed in the analysis of his speeches, represented a logical strategy in a setting where the combination of domestic and external factors created a structure of opportunity that made nationalism the most remunerative option for his maintenance on power.

19.1.3. The Kosovo Issue: Developments

Since NATO's intervention in Kosovo in 1999, which ended with the UNSC resolution 1244, the south-eastern Serbian province was under KFOR's control and the administration of UNMiK. Both Serbian as well as Kosovo Albanian's respect for the resolution and cooperation with UNMiK and KFOR forces was a crucial condition for the stability in the whole Balkan region. Among the political requirements to FR Yugoslavia, and later to the State Union and to Serbia, the EU included the respect of the resolution and cooperation with UNMiK, requiring the "constructive approach to settling the question of Kosovo's final status". Being Kosovo's status a very delicate question involving the international norms on sovereignty and territorial integrity, and being left open and unresolved in the resolution 1244, in the first years the EU opted to require the implementation of the existing instruments, dismantling the Serbian parallel institutions in the province and requiring the Serbian support for the Kosovo Serbs recognition and participation to the Kosovo institution. The Serbian elite opted to underline the sovereignty and territorial principle, deciding not to comply with those requirements that were perceived as "contributing to Kosovo's independence". In practice this meant that the parallel institutions in the Serbian municipalities were maintained, calling on the incapacity of UNMiK and Kosovo government to protect Serbian and non-Albanian population, while, at the same time, Belgrade was also supporting the Kosovo Serbs' boycott of Kosovo's political institutions, applying tactics similar to those used by the Albanians towards the Serbian institutions in the period prior to the armed conflict, 1990-1997.

By the end of 2003, under the mediation of the international community, Belgrade and Priština started the negotiations over the technical issues (judiciary, police, education, dismissed persons, political prisoners), leaving the final status to be settled only after a stable, multi-ethnic democratic regime was established in Kosovo. In March 2004 the escalation of violence made the international actors change their position: the incapacity of the KFOR and UNMiK to avoid the violence made it clear to all the key actors in the process and to the members of the Contact Group[610] that Kosovo's peace and stability were still far away, inducing them to propose the acceleration of the solution of the problem. The UN commission report, issued in October 2005, recommended that the status negotiations shall begin, and in the preparation for negotiations the Contact Group issued the guiding principles in November 2005, underlining that the return to the situation prior to 1999, the change of the borders and the unification of Kosovo with third states (Albania) were not possible. The negotiations started in the beginning of 2006, led by the UN Special Envoy for Kosovo Martti Ahtisaari. After (unsuccessful) cycles of negotiations, Ahtisaari was supposed to bring the proposal for the solution of the final status in front of the UNSC. The plan was supposed to be exposed by the end of 2006, but was delayed for "after the end of Serbia's parliamentary elections", called for as part of the constitutional reform (undertaken in September 2006) and scheduled for the 21.01.2007. The plan was delivered in February 2007, and was refused by Belgrade who argued that the plan prescribed the de-facto independence of Kosovo, undermined Serbian sovereignty and territorial integrity and as such was unacceptable for Serbian authorities. The Serbian government required another round of negotiations and a solution within the limits of the UNSCR 1244. The USA and part of the UNSC members prepared to vote the Ahtisaari plan and decide on the final status by giving an interpretation to the resolution 1244 that would allow the status solution *without* the need to adopt the new resolution, but the Russian veto in the UNSC blocked the process. The support provided by Russia in the matter was a core basis of the Serbian hard-line approach to the issue. A new round of negotiations were opened, with a three-month period, and were concluded without any significant improvements, as both parts involved in the process remained firm on their positions. The end of the three-month period, on 10.12.2007, saw the negotiation parts incapable of finding the solution. In the end of 2007, statements were coming from the

[610] Contact group for Balkans is composed by UK, USA, Russia, Italy, France and Germany, formed as an informal grouping of those countries that have a significant interest in policy developments in Balkans in a response to the war and crisis in Bosnia.

Albanian leaders in Kosovo that if the solution was not to be found until December the 10th, Kosovo would declare independence, an act that, according to the media from Priština, the USA, EU and NATO would support by immediately recognizing the independent Kosovo. This threat became a reality in February 2009, "safely" postponed after Serbian presidential elections, when on February the 17th Kosovo declared the independence, immediately recognized by the USA, and followed by the recognition by many other states, included most of the EUMS.

The official recognition of Kosovo's independence by the European Union was blocked by the veto of some Member States (namely Spain, Slovakia, Romania, Cyprus and Greece). This resulted in the difficulty for the EU to adopt a single foreign policy and common position on the issue. However, these countries did not block the EU's decision on the employment of a non-military 2,000-member Rule of Law mission, "EULEX,", whose main goal was to help Kosovo develop its police and justice sector.

The independence of Kosovo and the recognition that arrived from many countries caused the fierce reaction of Serbia. In line with the National Strategy for Kosovo, Serbia withdrew its ambassadors from all countries that recognized Kosovo. The conflict within the ruling coalition, between Koštunica (Prime Minister) and Tadić (president) over Serbia's foreign policy in this new asset, brought to the fall of the government, new parliamentary elections and political crisis that lasted until summer 2008 when a new government was formed. The EU integrations and relationships between Serbia and EU were seriously hampered by this issue, as in Serbia the further EU integrations were perceived by some actors (particularly Koštunica's DSS and SRS) as a Serbian acceptance of the Kosovo's independence. The signature and then ratification of the SAA were blocked, as Koštunica, who was then Prime Minister, claimed that SAA, as it refers only to Serbia without Kosovo, is directly attacking Serbia's territorial integrity and sovereignty. The pro-European forces on their turn claimed that as SAA mentions the UNSCR 1244, its signature would actually reinforce Serbia's position on the Kosovo issue, as it re-affirms the EU's acceptance of the UN resolution in which the independence of Kosovo is categorically excluded.

Kosovo and the question of Serbian foreign relations and EU integrations with which it is related, brought to the further polarization of the Serbian scene. The elections that took place in 2008 (presidential in January/February and parliamentary in May 2008) took the shape of

"quasi-referendum" for the "future of Serbia", marked by the significantly increased turnout[611]. After the formation of the new government in summer 2008, the government initiated a "softer" approach in the foreign policy, still underlining, however, that Kosovo's independence is unacceptable for Serbia and trying diplomatic links in order to defend Serbia's position. The SAA was ratified, both EU integrations and the Kosovo issue being among the government's primary goals. In October Serbia required the UN to ask the International Court of Justice's opinion on Kosovo's independence, a decision adopted by the UN with 76 votes for, 6 against and 74 abstained. The decision of the UN opened a new period in Serbia's foreign policy: any decision is postponed for "after the sentence" from the UN, as the "official plan" is to seek the re-opening of the negotiations once the ICJ sentence declares Kosovo's independence unlawful. The UN decision also served as a strong argument in front of the Serbian electorate, which gives the decision makers the image of "those who successfully play the game on the international scene to defend Serbia's interests in Kosovo". It also justified Serbia's approach towards those countries that recognized Kosovo after this decision of the UN: Serbia banned the ambassadors of Macedonia and Montenegro after these two countries, Montenegro under the USA pressures, and Macedonia due to the internal pressures coming from the ethnic Albanians, recognized Kosovo's independence in mid-October 2008.

19.1.4. The Implications of the Kosovo Issue

The Kosovo issue significantly shaped Serbia's both internal and external politics. We have already underlined above how the pressures to cooperate with ICTY increased the costs for the ancient regime supporters that, in order to avoid the trials, opted to advocate an alternative path in the foreign policy. They used the conflictive relationship between Serbia and Western democracies in the '90s and particularly the Kosovo issue to channel the dissatisfaction of the population in the re-awakening of the nationalist rhetorics. The re-awakening of nationalism served a series of goals: it mobilized consensus behind which the ancient regime and the losers of the possible EU integration rejoined in order to protect their interests; it was used by the government to strengthen the executive, to switch the public's attention from the economic issues and to mobilize consensus and fight back the opposition

[611] For the second round of the presidential elections 2008, in which two candidates representative for two distinct visions of Serbian future ran for the office, the turnout was 68%, the highest ever reached in Serbia. The competition between the same two candidates (Nikolić vs. Tadić), for the same position of the president of Serbia, in the second round of the presidential elections 2004, where the political alienation was very similar, succeeded to attract to the pools only 48% of the Serbian electorate.

(here we recall the adoption of the new constitution and the violence on the media, NGO and political opponents, particularly in the last two years, see the sections on constitutional reform, civil sector and media). On their side, the re-awakening of nationalism was particularly useful in the field of foreign relations, where the strengthening of the ultra-nationalist party was used to strengthen the bargaining position of the so-called "pro-European" elite, and, more generally, to decrease the vulnerability of Serbia towards the western influence. The nationalism and the "treat of ultra-nationalists gaining power" was used in several occasions to postpone the negotiations on Kosovo's status by scheduling the elections/referendums in a manner to force the international community, fearing the electoral results and ulterior strengthening of nationalists, to postpone the decisions for the period *after* the electoral competition. We can thus observe how all "important" moments in Kosovo's status settling were scheduled and then postponed by the Serbian electoral competitions: the beginning of negotiations on "technical issues", postponed for after the parliamentary elections in December 2003, the exposition of the Arthisaari's plan for Kosovo, re-scheduled for after the 2006 parliamentary elections, and finally the date for independence was postponed until the end of the presidential elections on February the 3rd[612]. Finally, nationalism was also used, in a strategy Putham well describes as the two-level game, to obtain a more favourable treatment: in the beginning of 2008 Serbia was offered the signature of the SAA and "quicker integration into the EU".

The tactics used by Serbia's political elite in approaching the problem of the Kosovo's status (hard-line, use of internal instability to increase the negotiation potentials), beside resulting in a defeat[613], also brought to significant internal costs. The intensification of the negotiation over the Kosovo's issue and the usage of the nationalist rhetorics caused a general increase in the temperature and consequent re-definition of the priorities of some actors. Thus, Koštunica's DSS changed the party line towards a more "patriotic" one, which subsequently caused Tadić's DS to slightly moderate his "pro-European" approach changing the position in order to make his party acceptable to Koštunica in 2007. The polarization of

[612] http://www.iht.com/articles/ap/2007/12/12/europe/EU-POL-Serbia-Elections.php.

[613] Serbia's foreign policy in defending its territorial integrity should be considered a complete defeat for several reasons: 1) Serbia did not succeed in making its own solutions adopted 2) Serbia did not succeed in getting support from the relevant international actors who decided to support Kosovo instead 3) most importantly, while it increased its bargaining power in the short run, Serbia did not use its advantage for obtaining other goals: like for requiring better protection for the Serbs living in Kosovo, settling the economic questions and property issues with Kosovo, or improving its international position. With its hard-line approach and the nationalistic rhetorics, Serbia lost the opportunity to minimize the losses deriving from Kosovo's independence which appeared inevitable already in the second half of 2007.

politics became evident, as such re-structuring of the preferences saw the emergence of a new force on the "pro-western, pro-democratic" extreme of the party system in 2006-2007, being a clear sign of the polarization of Serbian society and centrifugal tendencies in force. The growing violence, directed against ethnic and sexual minorities, as well as against the political parties, media and political leaders advocating the protection of minority rights, are one of the consequences.

This high ethnic tensions in the country are particularly dangerous considering that, beside Kosovo, Vojvodina's status is still not settled. Being, as Kosovo, an ethnically heterogeneous region, and claiming the autonomy enjoyed before the '90s already since 2000, once the Kosovo's status is settled, Vojvodina might drive an even stronger pressure for greater autonomy and the re-examination of its political status[614]. Such requirements, seen the current intensification of the ethnic conflict, might be both intensified by, as well as become a source of, the further radicalization of nationalism. It would require considerable wisdom and experience to solve Vojvodina's status problem, especially after such period of top-down ethnic manipulation and radicalization.

Another cost of this tactics lies in the credibility of the political actors. The stakes in the game have been set so high, that it becomes impossible for any Serbian party leader to recognize the independence of Kosovo without losing their credibility. Rather similar is the problem of Serbia's integration into the EU: as many EU officials underlined (yet, the official standing of the EU on Kosovo is still pending), while the recognition of Kosovo's independence is not a condition for Serbia's integration into the EU, the "good relations with the neighbouring countries" are. It was already a difficult process for Serbia to accept the EU mission in Kosovo, EULEX, considered illegal by the Serbian authorities, but on which the EU adopted the position that it could not be negotiated. The position of the incumbent Serbian political elite is to keep the question of the EU integration separated from the question over the Kosovo's issue. As far as it succeeds in doing so, Serbia's integration into the EU has some chance. But should Kosovo become a condition for Serbian EU membership, the costs the compliance with such requirement would produce for the Serbian ruling elite (indifferently from which party holds the office) would be very difficult to handle, risking a new blockage of the process of integration.

[614] For the dynamics and chain reactions caused by the secession of one part of the country see Bunce, 1999, 2005, 2006.

As far as the further democratization of Serbia is concerned, here we recall the well-known negative correlation between the nationalization policies and the democracy building: the radicalization of the ethnic sentiments surely is not a positive atmosphere for the process of democratization, a rule confirmed in Serbia's case by the data on the growing violation of the human rights in the last two years. The claim in front of the ICJ and the unsolved problem of Kosovo's status keep the question over the polity in Serbia still open, thus representing on one side an obstacle to the democratization, and on the other a potential source for the future radicalization of nationalism.

Before closing, we should ponder on the impact that Kosovo's independence had on Serbia's party system. The unilateral proclamation of Kosovo and the recognition by most of the EU Member States represented an external shock that brought to the further polarization in Serbia, the emptying of the center and the concentration on two blocks, pro-EU and hard-line nationalists. The electoral defeat Kostunica suffered in 2008 and the increase of the vote share that went to those parties representing the poles of the system clearly show this tendency. The result of the 2008 parliamentary elections brought Milošević's SPS to the center of attention as the only party acceptable as a partner both by nationalists and pro-Europeans. The negotiations started, the influence of the EU appearing rather important seen the frequent consultations of the SPS leadership with different international actors. After a few months, the party succeeded to model its own ideology in a manner to justify the coalition with the DS on the grounds of its socio-economic policy. As far as the question of Kosovo and EU integration is concerned, the ruling elite successfully argued that the two problems are separated, underlining that it is possible to be both patriot and pro-European, and that the EU integrations could be, rather than an obstacle, a mean in Serbia's struggle for its territorial integrity.

As the European future of Serbia became more certain with the ratification of the SAA, part of the nationalists re-defined their own positions on the EU integration. Guided by the leader of the SRS, Nikolić, part of the nationalists exited the party due to the inner conflict over the EU. It is still soon to say what influence such decision of Nikolić had. Surely, seen the latest shifts and the EU influence on the internal distribution of power, and, in particular, seen the rehabilitation and re-legitimization Milošević's SPS gained due to its participation in the pro-European government, Nikolić's pragmatic considerations induced him to seek to move his faction from the extreme right to the far more remunerative position of the center-

right. After several years of opposition to the EU and the "irresponsible" opposition that saw him losing power despite the size of electoral support he enjoyed, induced by the external shocks that brought to big shifts in the party system, he embraced a more pragmatic, power-oriented strategy. Covering what previously was the position held by Koštunica (pro-EU but with respect for Serbia's national pride), he gained the legitimacy of the EU (previously closed for the SRS, several western ambassadors made contact with the new Nikolić's party). This also limited the room for strategic movements of the DS which, in the period March-September 2008, was gaining a disproportional strong influence. The party system still remains polarized in the dimension of the foreign policy (with the remaining SRS and DSS on one extreme and LDP on the other), but the actors at the center changed, as well as the strength of one of the extremes. The pro-European option gained more support, while the present situation is characterized by an extremely high level of electoral uncertainty for all political parties. As we identified the peripheral turnover and high electoral certainty for some actors (like Koštunica) as a main obstacle in the process of the democratization in Serbia, this moment might appear crucial for the further developments of Serbian democracy.

19.2. Macedonia: The Name Dispute

19.2.1. The Contested Identity

One of the most salient issues of Macedonia's foreign policy concerns its struggle to gain recognition under its constitutional name (Republic of Macedonia). The importance of settling the name dispute with Greece is many-fold. First of all, the lack of international recognition under the constitutional name is a source of stress in the nation-state building process, keeping the nation-building policies high on the agenda and this way contributing to the alimentation of the nationalism in the country[615].

Secondly, the name dispute with Greece has obstructed, and still does, Macedonia's integration into the various international organizations. Macedonia's membership in UN, IMF, WB, WTO, and more recently in NATO have all been blocked by Greece which was seeking to use its international influence to force the Macedonian authorities to change their position. The consequences are many fold.

[615] On the inner tension between the nation-building process and the democratic principles, see Goio, 2007. On the difficulties the nation-building process creates for democratization, see Linz and Stepan 1996.

On the level of the foreign policy, the country is much more vulnerable towards the other states whose recognition it is seeking for. Concentrated on the name-issue, the bargaining power of the Macedonian diplomacy in other fields is decreased. Further on, it also makes the country more vulnerable to the influence of the IO in which the country is, or wants to become, a member. The threat of Greece lobbying or even veto against Macedonia's candidacy increases the country's incentive to comply with the membership norms and accession criteria. The illustrations for this point can be found in Macedonia's compliance with the UN embargo to Serbia which brought enormous costs to the country's economy strongly dependent on trade with the northern neighbour[616], or in its overly praised compliance with the NATO pre-accession conditionality. And yet, even though declared to be the country that among the three candidates for the last NATO enlargement showed the quickest and highest level of compliance, Macedonia's membership is still blocked by Greece's veto.

Further on, the blockage of the country's international recognition and the Greek obstruction to the country's membership in the international organizations had an important impact on the domestic events. As we saw in the section on the economic reform, the delay of the membership in the international financial institutions influenced the early periods of the country's economic transition, while the Greek embargo (1994-1995) brought significant costs to the Macedonian economy.

Last, but not least, the persisting of the name dispute with Greece that successfully blocked Macedonia's much longed for membership in NATO and that raised concerns over Greece's reaction to the future EU membership of Macedonia might further complicate the already fragile inter-ethnic relations. As our analysis of the process of democratization in Macedonia showed, the prospect of the NATO and EU membership appears to be the only goal keeping the ethnic Macedonians and ethnic Albanians together. The events linked to the constitutional changes in 2005 clearly showed that a prospect of Euro-Atlantic integrations is maybe the only incentive capable to induce the ethnic groups to put their disputes aside. Currently, the ethnic Albanians are supportive for Macedonia's foreign policy, yet should the stagnation in the NATO membership persist, their position might change. Particularly, seen the low level of legitimacy of the Macedonian state by the ethnic Albanian minority, and seen the importance the EU and NATO membership has for the Albanian political parties in Macedonia, the

[616] Bozzo and Simon-Belli, 2000, underline the research for the international recognition as a central factor inducing Macedonia's high level of compliance with the obligations deriving from the membership in UN.

impact of the name dispute over Macedonia's foreign policy might have serious consequences for the inter-ethnic relations as well[617].

The dispute with Greece started immediately after Macedonia declared the independence in 1991 and adopted the name "Republic of Macedonia" in its constitution. The controversy was born due to the existence of the region of Macedonia, a geographical unit, whose territory was covering the territory of northern Greece (Aegean Macedonia) and eastern Bulgaria (Pirin Macedonia) as well, and can be seen as a continuity of the older conflict over the region dating back to the First and Second Balkan Wars. After the liberation from the Ottoman occupation of the territory of the Macedonia (as a geographic region) the division of the territory between Greece, Serbia, Bulgaria and Albanian brought to the Second Balkan War. While Macedonia's nationalists tried to promote the creation of a new state (the Great Macedonia, including parts of the nowadays Greece and Bulgaria as well), the peace treaty divided the territory between the forces that took part to the war against the Turks, and the geographic region of Macedonia was divided between the Serbs (a part to become "Southern Serbia" and since 1944 the Socialistic Republic of Macedonia), Greeks and Bulgarians[618]. The key principle of the Greece in the name dispute, beside the underlining of the Hellenistic heritage of the name "Macedonia" and the intellectual property over the "Vergina Sun" (the symbol Macedonia adopted in 1992 as its flag), is also the presumed concern over the Republic of Macedonia's territorial pretensions on the Greek territory.

In a response to the dissolution of Yugoslavia in 1991, an Arbitration Commission of the Peace Conference on the former Yugoslavia (Badinter Commisison) was settled up by the Council of Ministers of the EEC in order to assist the Conference on Yugoslavia with legal advice, particularly on whether or not the republics that declared the independence should be recognized as independent states. The opinion on Macedonia was issued in January 1992, underlining that the state gave the necessary guarantees to respect human rights and international peace and security, settled as the requisites for the recognition, and that the country fulfills conditions for being recognized as independent[619]. However, the Badinter commission's opinion was set aside, as Greece succeeded in convincing its partners to formulate the position "whereby it was to recognize FYROM in accordance with the

[617] This point was also underlined by professor Hristova in the interview conducted by the author in August 2008.

[618] On Balkan wars, division of the region of Macedonia, and the establishment of the SR Macedonia, please see Demetrius, 2001.

[619] See the Badinter Commission Report No. 6.

December 1991 declaration and only "under a name which does not include the term Macedonia" (Lisbon European Council, Conclusion of the Presidency, Annex II, cited in Demetrius, 2001, p. 4). According to Demetrius, in exchange for the pressure on Macedonia to change the name, Greece promised its EC partners to ratify the Maastricht treaty, participate to sanctions against Serbia and ratify the EC financial protocol with Turkey.

However, the Greek position slowly weakened as the war in the Balkans raised concerns over the future of Macedonia as well. The Security Council of the UN decided to accept the country's candidacy for the membership into the UN according to the provisional name "Foreign Yugoslav Republic of Macedonia", which was a label often used by the IO in discussions over the Macedonian case. A series of IOs followed this example by accepting the FRYoM as a member (in particular IMF and WB).

The conflict between Macedonia and Greece, however, did not settle with the adoption of this provisional solution (which in fact was opposed both in Greece and Macedonia). The rise of nationalistic feelings in Greece due to the "betrayal from its Western partners" over the name-issue (in particular NATO and EU, a betrayal that consisted in a series of recognitions of Macedonia as an independent state both under its constitutional and FRYoM name) brought Papandreou to adopt a hard line against Macedonia, imposing economic sanctions to the country in 1994. The two countries re-established the relations in 1995, due to the strong pressures on Greece coming from the other EU Member States, when the "provisory" solution was found: the Macedonia was to give up the use of Vergina Sun flag and to change the parts of the constitution that Greece found offensive, while Greece would not object to any application by the country under its provisional name FRYoM, allowing the country to enter OSCE, Council of Europe and Partnership for Peace. As far as the name was concerned, no solution was found and the agreement settled that the countries should continue negotiations under the auspices of the UN Secretary-General.

A series of lengthy and unfruitful negotiations followed. A solution which was acceptable for both parties, however, was not found. The negotiations were intensified in 2007 when the proximity of the country's NATO membership brought the issue high on the agenda. While avoiding to mention the usage of veto (also due to the interim agreement), Greece however made it clear that it would block the country's application in both NATO and EU and that it would not ratify Macedonia's access to the EU and NATO if the name issue was not solved

beforehand[620]. By the end of 2007, Greece made it very clear that no NATO or EU access for Macedonia under its current name would be possible, causing reactions from Skopje and opening new negotiations. As in March 2008 the country was not called to join NATO as expected, due to Greece's intervention, it became rather clear that Greece would use Macedonia's so longed for integrations to strengthen its position in the negotiation.

However, until now Macedonia showed determination not to give up its identity, both sides being radical in disputing the different proposals advanced by Matthew Nimetz, UN Secretary-General's Personal Envoy for the Greece-FYROM negotiations. The set of proposals advanced in October 2008 was officially refused by Skopje, as it was considered unacceptable due to the "uncertainty such proposal induces for the national identity" (mainly the usage of the label "Macedonian" for the language and nation[621]), while Greece also has some perplexities.

Pressed by Greece's veto in NATO and by potential obstacles for the EU membership, Macedonia's leadership decided to follow the example of Serbia's diplomacy on the Kosovo's issue and to require the arbitration of the international court of justice for what it called a "violation" of the 1995 Interim Accord. Yet, as there was no official Greek veto in NATO (formally the decision was not brought on vote), the exit of the verdict is highly uncertain. In August 2008 the Macedonian government also openly supported the organization of the Aegean Macedonians in their property right claims against Greece and intensified the pressures for the recognition of Macedonian ethnic minority in Greece for the first time. In a letter from the Macedonian Prime Minister Gruevski to Ban Ki Mun and the UN Secretary General Special Envoy, Macedonia's PM required that the recognition of the Macedonian ethnic minority in Greece (according to the Greek Helsinki Committee, about 30.000 people) and the problem of the children of the Aegean Macedonians (who were deprived of their property and expelled from Greece during the Greek Civil War) should also be included in the negotiations on the name dispute[622]. In his response, Ban Ki Mun underlined his interest for the issue, arguing however that the name solution should come first, this way preparing the

[620] "Embassy of Greece - Washington, DC" (in English). Answer of FM Ms. D. Bakoyannis regarding the FYROM name issue. Retrieved on September 11, 2006.

[621] For the reactions on the proposal see: http://www.dnevnik.com.mk/default.asp?itemID=1DA13135787BC8469A64922A935C5E84&arc=1.

[622] The text of the letter to Ban Ki Mun available at:: http://www.vecer.com.mk/?ItemID=4D82805E875E6747AB9537BE288552EE. The text of the letter to Karamanlis available at: http://www.vlada.mk/?q=node/704.

basis for the recognition of the Macedonian minority in Greece[623]. He also immediately called a meeting with the Greek negotiator requiring explanations on the existence and status of Macedonia's minority in Greece and underlining that the matter would be analyzed in detail[624], a step that is believed to slightly improve Macedonia's position.

Beside the issues concerning the Aegean Macedonian's property and citizens rights in Greece, the status of the Macedonian minority, and the Interim Agreement with Greece, another issue strengthening Macedonia's negotiating position is the rather diffuse number of countries that recognized the state under its constitutional name, USA included (since 2004, as a strategic step in fostering the decentralization of Macedonia, see the part on decentralization). The two countries thus appear stuck to their positions, while the new NATO summit in December 2008 and the insistence of the EU in December for elections, political dialogue and the name issue[625] as key conditions of Macedonian integration are increasing the pressures on Macedonia.

19.2.1. EU and the Name Dispute in Macedonia

The position of the EU and its member states towards the problem of the Macedonian dispute with Greece was rather ambivalent in time, reflecting the lack of consensus among MS. The Greek capacity to use the veto power and to bargain with its partners surely made Macedonia's EU integration an important trump to use in bargaining with Macedonia. The very procedure of the accession according to which all MS should ratify the document on the EU enlargement gives Greece the last word in the dispute.

The name issue became a matter of the EU conditionality only recently (only since 2006 accession partnership with Macedonia), requiring Macedonia to be "cooperative" in the problem solution. In its official documents, the EU always used the name of the Former Yugoslav Republic of Macedonia, while 12 out of its 25 member states recognized the country under its constitutional name. Judging from the positions the countries took in the question of Macedonia's membership to NATO, only few EU MS (Slovenia, Czech Republic, Estonia, Lithuania, Denmark and Bulgaria) supported the USA proposal on Macedonia's admission.

The EU's approach to the name dispute with Greece is often underlined as unjust by the Macedonian public, as a certain inconsistency even with the EU norms is pointed out, but no

[623] Seehttp://www.setimes.com/cocoon/setimes/xhtml/en_GB/newsbriefs/setimes/newsbriefs/2008/08/20/nb-04.
[624] See: http://macedoniaonline.eu/content/view/3442/1/.
[625] http://www.utrinski.com.mk/?ItemID=62D9252B20F303479C91D745E8B1430D.

such positions were advanced by the political actors or official bodies. Such situation brings to the resentment of the Macedonian citizens and offers the decision makers the chance to rather successfully play the nationalistic card. The Greek journal Kathimerini underlined in October 2008 that the Greek diplomats were becoming pessimistic about the perspectives of a solution to the name dispute, as, according to their findings, "the government of the FYRoM is planning a public campaign to convince its people that their national identity is more important than the prospect of European Union membership" (Leviev-Sawyer 2008). Such findings are based on the speeches of the Macedonian Prime Minister that since summer 2008 underlined in several occasions that no trade with name should be made, that country "can even without NATO", "that Macedonia can develop internally if Greece blocks the NATO and EU membership" of the state. Such statements are perceived by the opposition as an effort to use the nationalistic rhetoric to seize the power and as a strategy of delaying Macedonia's Euro-Atlantic integrations in order to allow further enrichment of those parts of the economic elite which support the ruling coalition[626].

While it is difficult to assess the validity of such claims, we should ponder on the impact of Gruevski's strategy. Searching for an alternative in the foreign policy and increasing his requirements from Greece can be perceived as a tactic for increasing its own bargaining power. At the same time, should Macedonia really find a credible alternative in its foreign policy, the EU leverage will significantly decrease. Further on, seen that currently the only common goal that keeps Macedonians and Albanians together is the EU and NATO integration, the failure the enter these organizations might have a negative impact for the inter-ethnic relations in the country.

19.3. A Comparative Assessment

In this section we analyzed the impact of the "other political requirements", in particular, the cooperation with ICTY and Kosovo's status in Serbia and the name dispute between Greece and Macedonia. The impact of these issues on the process of international anchoring

[626]See http://www.utrinski.com.mk/?ItemID=D7E032415E3BD7409A3D673BA0B11758, http://www.utrinski.com.mk/?ItemID=88A0395735ABA343875B7A1680E581AC, http://www.utrinski.com.mk/?ItemID=917E3E281AC4E74FB24EBC957415ADC9, http://www.utrinski.com.mk/?ItemID=A15E6C6B50C34049A7DC7A0AD2A07BA0, http://www.utrinski.com.mk/?ItemID=B453407E6D39884CAC43C65C30B0E2CD, http://www.utrinski.com.mk/?ItemID=1805853338B5B846810C01EE3FC3F441 .

of the democracy in the two countries under the study significantly differed, both due to the position held by the EU, but also due to the substantial differences between these issues. For the analytical purpose we can observe that the "nature" of these three problems differ: on one side we have Kosovo's status and the name dispute, the issues tackling the state's identity and sovereignty, and on which on the domestic side there is a rather high consensus over the preference (none of Serbia's leaders ever publicly advocated Kosovo's independence, none of Macedonia's leaders ever publicly denied Macedonia's national identity). Further on, both these issues are directly linked to the questions of the nation-building, and represent a rather fertile ground for potential nationalistic mobilization. They do not directly distinguish on the domestic level between winners and losers, for being questions of national interest, these issues usually gain the overall consensus. Further on, being sensitive issues concerning the nation-building process, they might be potentially used to rise nationalism, and, as we saw in Serbia's case, to result in the growing tensions between the target state and the EU. The lesson of the impact Kosovo's question had on Serbian domestic and foreign policy might be important for the future development of Macedonia's foreign policy. As we underlined, the recent statements of Macedonia's Prime Minister, according to whom "Macedonia has an alternative" and "it can seek for internal development", represent an official consideration by Skopje on Macedonia's alternatives in foreign policy for the first time. If we recall the finding of Macedonia's annalists, according to which in the process of the EU integrations the best strategy for the applicant countries is the membership without compliance with the EU requirements[627], further on, if we recall the increase of Koštunica's bargaining power created by the existence of the anti-EU option, and finally, if we recall the Serbian ad Bosnian gains in bargaining with the EU, then we can conclude that a failure to reach an agreement on Macedonia's name dispute might have serious consequences for the country's future relationship with the EU. Using the nationalistic rhetorics and calling for a shift in the foreign policy ("Macedonia has an alternative", or "Macedonia should cooperate with China and Russia[628]", or "Macedonia, as it can not enter NATO, should enter the Non-Aligned Movement"[629]), Macedonia can increase its bargaining power towards the EU, diminishing, through the presence of the alternative, the reward offered by the EU. Similarly, it can ease

[627] In the article on the EU conditionality, prof Karakamiseva analyses the negotiation process as the prisoner Dilemas', showing how the winning option for the EU is the domestic reforms without the memebrship, while for the applicant countries the best result is achieved with the memebrship without reforms. Karakamiseva 2008.
[628] See http://www.utrinski.com.mk/?ItemID=3839035AEE408F428E182F133A9E5BB7.
[629] See http://www.utrinski.com.mk/?ItemID=3839035AEE408F428E182F133A9E5BB7.

the citizens' pressures for EU membership. The outcome, from the standing point of the Macedonian incumbent elite, is win-win. Either they arrive to a more acceptable solution to the name dispute, or they cover the responsibility for the country's deficiencies in democracy that brought to the negative EU Commission report in November 2008, keeping the country in the anti-chamber of the EU, drawing benefits from the further ethnicization of politics, corruption and un-controlled power.

Finally, we underlined how, due to the lack of domestic consensus between the Albanian and the Macedonian block, the failure of the country's integration in NATO and EU might cause serious problems for Macedonia's peace and democracy.

On the other hand, the cooperation with the ICTY is a positional, rather than a value issue, with strong effects on the distribution of power, and extremely high costs for a specific, narrow group of individuals who are strongly incentivized to mobilize in order to avoid compliance. Moreover, as we saw, similarly to the economic issues, the insistence on the compliance with the ICTY actually reinforced the re-distributive effects of both democratization and EU integrations. The old regime supporters were thus destined to lose in each single dimension of the great changes the Serbia was undertaking. Being so, the linkage between the domestic regime change and the boundary removal process, the main characteristic of the anchoring model we apply in this study, rather than allowing the actors to compensate in one field the losses suffered in other dimensions, it went on creating absolute losers and absolute winners. Being so, the "other political requirements" in Serbia's case proved to be crucial for understanding the last eight years of Serbia's domestic politics, and turned out to be the main cause of the obstacles in Serbia's democratization and EU integration process.

Table 1: "EU recommendations to Serbia concerning ICTY and Kosovo".

2002	Existing good cooperation between Belgrade and Pristina, including within the competencies of the provisional institutions of self-government, should continue and develop. Parallel Serbian institutions and jurisdictions in Kosovo must, however, be dismantled. All parts of the FRY should be aiming for compatibility with European -EU and Council of Europe – standards. Cooperation with ICTY should improve. Indictees should be surrendered to the Hague - including and particularly those currently holding elected office or military positions. There should also be full cooperation on investigations, access to evidence (witnesses, documents, archives - particularly military) and, if a law is still considered necessary, it should be adopted immediately. UNSCR 1244, and the Common Document of November 2001, should be fully implemented. Review of the cases of all Kosovo Albanian prisoners should be completed, and the agreed transfers implemented by spring 2002 at the latest.
2003	Improved co-operation with ICTY in all regards. Full respect and implementation of UNSCR 1244 and further development of cooperation between Belgrade and Pristina (UNMiK and PISG)*. Full and immediate dismantling of parallel Serbian institutions and jurisdictions in Kosovo.
2004	Ensure full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Fully respect the UNSCR 1244 and continue dialogue with Pristina on practical issues of common interest. Ensure recognition of UNMIK travel documents and car plates.
2006	Key short term priorities: Ensure full cooperation with International Criminal Tribunal for the former Yugoslavia (ICTY). Fully respect the UNSCR 1244 and intensify dialogue with Pristina. Encourage the participation of Kosovo Serbs in the provisional institutions of self-government. Show constructive approach with regard to Kosovo.
2007	Ensure full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Engage constructively in the further negotiations to find a sustainable solution on the status of Kosovo together with the provisional institutions for self-government in Pristina.
2008	Ensure full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). Cooperate constructively on matters relating to Kosovo.

Source: EU SAA reports on Serbia and Montenegro, EU partnership with Serbia and Montenegro, EU partnership with Serbia, author's elaboration.

Table 2: "EU recommendations to Macedonia concerning name dispute with Greece".

2006	Short term priorities: Ensure regional cooperation and good neighbourly relations, in particular through intensified efforts to find a negotiated and mutually acceptable solution on the name issue with Greece, in the framework of UN Security Council Resolutions 817/93 and 845/93.
2007	Short term priorities: Ensure good neighbourly relations, in particular by intensifying efforts to find a negotiated and mutually acceptable solution to the name issue with Greece, in the framework of UN Security Council Resolutions 817/93 and 845/93.
2008	Ensure good neighbourly relations, in particular by intensifying efforts with a constructive approach to find a negotiated and mutually acceptable solution to the name issue with Greece, in the framework of UN Security Council Resolutions 817/93 and 845/93, and avoid actions which could negatively affect them

Source: EU SAA reports on Macedonia, EU partnership with Macedonia, Accession partnership with Macedonia, author's elaboration.

20. CONCLUSIONS: HOW TO EXPLAIN THE OUTCOME?

20.1. The Democratization Achieved: a Comparative Assessment

The main subject of this work was the development of democracy in Serbia and Macedonia. We decided to follow the changes introduced in a series of dimensions directly or indirectly linked to democracy (the analyzed dimensions included: constitutional issues, form of government and political system, decentralization, administration/civil service reform, judiciary, fight against corruption and organized crime, constitutional issues, law enforcement agencies and police service, civilian control over the military forces, and a series of civil, political and minority rights). This choice is actually following Morlino and Magen's definition of the "democratic rule of law"[630] and it was influenced by the necessity to choose a set of dimensions that is as near as possible to the set of dimensions in which the EU concentrated its activities (see the chapter about the theoretical framework). In the introductory part of each section we examined how the policy area analyzed is linked to democracy and to the process of democratization.

In Table 1 we bring the summary assessment of the current situation in each of the analyzed dimensions. Even though we assess the legislative framework by comparing it to the international (and EU) standards of democracy, and even though in most cases it also testifies the level of the country's respect for the norms promoted by the EU, the table actually does not refer to the compliance with the EU requirements: on one side we consider the dimensions in which the EU was not involved in the rule promotion (for example the civilian control over the military forces in Macedonia), on the other, in some cases we underline the deficiencies even in those fields where the EU assessment was actually positive (the constitutional issues in Macedonia for example). Beside the rule adoption, the practice and rule implementation is included in the table, as well as those issues raising particular concerns in a given dimension.

[630] Morlino and Magen, 2004; 2008.

A mere look at the table shows the striking differences between the two countries. If we had limited our analysis to the rule adoption and the assessment of the legislative framework, Macedonia would have appeared to be an established democracy with the legislative framework which in most cases follows the best international practices. However, by including the rule implementation in the analysis, we discovered a similarity between Macedonian democracy and Potemkin's villages: quite in line with its status of the only EU candidate whose negotiations are postponed, the Macedonian political regime only formally appears to respect the Copenhagen criteria. The rules on paper are not reflecting the reality of the Macedonian political regime, which is still judged to be only "partially free"[631]. In this light it is important to notice how, even in those cases of relatively good legislative framework and appropriate implementation, the final outcome is still unsatisfactory: we thus recall the institution of the Ombudsman which often fails to exercise its duties, or the High Judicial Council which was reported to actually abuse the high levels of independence it was given. Similarly, the Agency for Civil Servants and the Agency for the Fight Against Corruption, both institutions designed to implement the well-developed legislative frameworks, are often falling short of their obligations (the most clamorous example being the conflict of interest within the Agency for the Fight Against Corruption). Not to mention the case of the national assembly, designed by the constitution as a strong, independent legislator, which in reality is turned into a rubber stamp for the legislation already adopted by the government, a situation often registered in other countries as well. Finally, and most striking, the incapacity of Macedonia to ensure free and fair elections, without violence, threats, riots and intimidations at the polling place, is one of the most serious concerns for Macedonian democracy.

[631] Freedom House's index of the freedom in the World in 2008 assigns 3 points to Macedonia for both its civil and political rights.

Table 1: "Assessment of the status in the dimensions analyzed in Macedonia and Serbia".

Dimension (main concerns)	Macedonia	Serbia
Judiciary	Rules in line with EU standards adopted (2005-2006). Rule implementation ongoing, yet slow. (Judiciary independent, lacking accountability, corruption).	Rules adopted not in line with EU standards (political control over the judiciary)
Constitutional issues	Constitution in line with EU standards (1991, 2001, 2005). (The national consensus is still fragile due to the inter-ethnic conflict. Some constitutional provisions on the power-sharing represent a source of further ethnicization).	Constitution still failing to meet EU standards (2006) (particularly concerning: imperative mandate, decentralization, judiciary)
Decentralization	Rule in line with EU standards adopted (2002-2004). Rule implementation ongoing. (Difficulties in implementation. The relevant legislation introduced the provisions that further ethnicized the process of decentralization).	Rules adopted overly in line with EU standards, with some shortcomings remaining, regionalization still pending (2007) Difficult implementation (imperative mandate, centralizing effect of the decentralization)
Civil service reform	Rule in line with EU standards adopted (2000-2005). Implementation concerning the equal representation good. Implementation concerning professionalization and depoliticization lacking (politicization and ethnicization of the civil service, the law applied only to a limited number of civil servants, the problems in functioning of the Civil servants agency).	Rules in line with EU standards adopted (2004-2005) Rule implementation ongoing (politicization still persisting, failure to ensure the merit-based recruitment)
Fight against corruption	Legislative framework good. Lack of implementation. (Agency exists, but it is biased in its functioning, often failing to act. Series of charges are made, yet usually they are not prosecuted. Publicization of the cases).	Rules adopted subject to the serious shortcomings and loopholes annulling the effects of legislation Rule implementation lacking
Police reform	Rule in line with EU standards adopted (2006). Implementation concerning the decentralization of police service and equal representation: good. Implementation concerning the human rights protection and accountability of the police forces: obstructed.	Rules adopted but some serious shortcomings persist (2005-2006) Slow rule implementation (lack of clear organizational structure, lack of transparent control mechanisms, insufficient definition of the powers of police officials in performing their functions)
Civil control over military forces	Rules in line with EU standards adopted (1991-1992, 2001). Rules implemented. (persistence of the spoil system and politicization in appointment and recruitment).	Rules in line with EU standards adopted (2006-2007) Implementation ongoing
Civil society	Rules in line with EU standards adopted (1998, 2006-2007) Difficult implementation (NGOs financially dependent on the external support, their involvement in the	Rules in line with EU standards still not adopted

	decision-making process is minimal)	
Minority rights	Rules in line with EU standards adopted (1991,1995, 1997,2001-2008) Good implementation (weakness in protection of the minorities other than Albanian)	Rules in line with EU standards adopted (2002) Slow implementation (the overall spread of intolerance in Serbian society)
Elections and right to vote	Rules in line with EU standards adopted (2002; 2006) Complete lack of implementation (repeated acts of violence on the elections)	Rules in line with EU standards still not adopted Good implementation (compensating for the shortcomings in the legislation. Problem: imperative mandate)
Ombudsman	Rules in line with EU standards adopted (1997; 2003) Rules implemented (Yet, the institution is several stances failed to exercise the own function. Political appointment created politically biased institution	Rules in line with EU standards adopted (2005-2007) Full implementation obstructed (institution is functioning and mainly fulfilling its duties, even though it is faced with serious obstacles)
Media	Rules in line with international standards adopted (1997-1998; 2005-2006) Difficult implementation (financial autonomy and sustainability of the public broadcaster hampered, unclear media ownership, media controlled by economic and political elite, political interference on media)	Legislative framework still subject to the serious shortcomings (2002-2006) Slow implementation (political influence over the media, violence over the journalists, hate speech, non-transparent allocation of frequencies)

Unlike Macedonian democracy on the paper, in most of its dimensions Serbia did not even pass the threshold of the rule adoption. In some areas a complete lack of a legislative framework in line with the democratic standards was registered, while in others the commitment to the best international practices is combined with the loopholes built in the legislation which directly hamper the effects of the rule implementation. A high administrative capacity (often praised by the EU as the best among the countries in the region) is combined with hampered – or missing – democratic norms. In some cases, mainly where goodwill persists, this high administrative capacity is capable to compensate for the lack of adequate legislative framework: thus for example, even though the legislative framework regulating the elections is far from the European standards, the Serbian elections are usually assessed as mainly free and fair. However, such situation is limited only to those dimensions where political will allows the implementation to compensate for the lack of adequate legislation: in all other cases where the political will is lacking, the stakeholders are using the implementation phase to annul the effects of the laws.

The lack of judiciary independence and the imperative mandate which assigns the control of the mandates to the political parties are the two most serious shortcomings of Serbian democracy. Together, these two elements bring to the malfunctioning of all other democratic mechanisms and institutions. The media freedom, the fight against corruption, the minority rights, none of these dimensions can function without an independent judicial power guaranteeing the political, civil and human rights of the individuals. Similarly, the assembly's control over the executive, the decentralization as a mean of bringing the government closer to the citizens, the right to vote and to be elected are all hampered due to the introduction of the imperative mandate which de-facto annulled the effects of these rights and mechanisms[632].

The two countries, thus, even though apparently far from each other when it comes to their normative framework, are rather similar in the level of (lack of) democratization. In the previous chapters we showed how, in many dimensions, they faced similar problems: overall politicization and prevalence of the spoil system, state capture, unaccountable ruling elite, and overspread corruption were registered in both countries. The "rule of deal" replaces the rule of law, and the main line of discrimination in both Serbia and Macedonia is the line dividing party members from the ordinary citizens. Following the developments in the analyzed dimensions, we noticed how in both countries the decision-making process is very often untransparent, characterized by the exclusion of the NGOs, experts or other civil society

[632] See the relevant chapters.

actors and with the intra-party (intra-ethnic) bargaining (see for example the decentralization reform in Macedonia and Serbia, police reform and electoral reform 2002 in Macedonia, legislation on judiciary and even the constitutional reform in Serbia). Even in those cases when the law was drafted in cooperation with relevant NGOs, domestic and international experts, the deputies in the assembly were rather successful in amending the law draft in a manner to empty the legislative proposals of any substance. The main difference between the two countries, rather than in the outcome, is in the form of the deficiencies: in Macedonia the relatively good legislative framework is not implemented, while in Serbia the bad norms are quite respected[633].

While the outcome in the two countries is similar, the mechanisms that brought to this lack of accountability and strengthening of the ruling elite differ[634], quite in line with what was reported in the interview with Jovanovski: "if you compare Macedonia and Serbia, the situation on the ground is very similar, only the manner differs".

In Macedonia the main mechanism strengthening the political elite vis-à-vis the society derives from the consociational democracy design and power-sharing mechanisms built in the political system. Some kind of power-sharing was sought as a solution for the inter-ethnic conflict already in the first year after the independence (the inclusion of the Albanian ethnic parties in the government, for example), but it became a hallmark of the Macedonian political regime (culminated in a tendency towards non-territorial ethnic federalism[635]) only since the 2001 Ohrid Framework Agreement[636]. The decentralization, the principle of equal representation in the state administration, the veto-power of the minority, the joint control of the major ethnic groups (ethnic Macedonians and ethnic Albanians) over the executive, the proportionality of the parliamentary representation, all these mechanisms were included into the Macedonian political life. Even though prescribed as a mean for solving the ethnic conflict in Macedonia, in the empirical part of this thesis we actually identified the power-sharing mechanism as both a mechanism hampering the Macedonian democratization and a source of further ethnicization of the Macedonian politics which would increase, instead of smoothing out, the inter-ethnic divisions. As Snyder argued, power sharing is a difficult, if not even

[633] Such finding is in line with the results of similar recent researches on democratization. Morlino and Magen thus identify the "executive control" and the mechanisms of limiting the executive's influence as the areas in which the strongest opposition to the change was registered. See Morlino and Magen, 2008.

[634] You can also see the conclusive chapter and the tables in the appendix for the chapter on corruption that analyzes the different causes for corruption in two countries.

[635] See Gaber-Damjanovska and Jovevska, 2006. See the section on the form of government.

[636] See the sections on constitutional reform, form of government, decentralization, civil service reform, police reform, minority rights.

dangerous, solution in societies that are not fully democratic, and this seems particularly true for Macedonia. When we assess the situation in Macedonia in light of a comprehensive list of conditions for the successful establishment of consociational democracy, identified by Schneckener (2002), we find that in the aftermath of the 2001 ethnic conflict the country did not satisfy the conditions necessary for the successful application of the power-sharing mechanisms. In particular, it lacked the numeric balance between the two ethnic groups[637]; there were large socio-demographic differences between the two groups, with economic disparities and rather different structures of economic opportunities across the groups[638] and the overreaching loyalties that would reduce the exclusiveness of ethnic attachment were missing[639]. The analysis of the party system showed that there are no significant ideological differences between the political parties, particularly in the Albanian block, and the electoral behaviour showed the absence of relevant cleavages that would cross-cut the ethnic lines[640], while what happened with the Albanian ethnic parties' maximization of requirements and events linked to the May agreement showed that the Macedonia is still far from having a stable status quo[641]. The tradition of compromise and mutual understanding is also lacking[642], while the high level of political fragmentation into blocks (two big parties and several small ones for each block[643]) increases the level of competition within the single ethnic group, which enhances their blackmailing potential and diminishes their coalitional potential[644]. The inclusion of the power-sharing mechanisms in a setting that evidently did not satisfy the conditions for its success brought to the development of a logic well described by Snyder in

[637] Macedonians enjoy the majority counting for 64%, while ethnic Albanians count for 25% of the population. See the section on minority rights.

[638] On the socio-demographic disparities see Nikolovska and Siljanovska-Davkova, 2001. On the differences in the economic activities and on the different structure of opportunities for the two ethnic groups, see the European Stability Initiative report 2002, "Ahmeti's village, the political economy of inter-ethnic relations".

[639] While Macedonians perceive themselves as the titular nation, the ethnic Albanians in Macedonia lack the identification with the Macedonian state: there is no attachment to the state symbols, identity, past, religion, institutions. See the section on the constitutional issues and the section on minority rights.

[640] See the chapter on the forms of government. The lack of cross-cutting cleavages also emerges from the socio-economic and cultural characteristics of the two ethnic groups.

[641] See the section on the constitutional issues.

[642] The confrontation between the government and the opposition, rather than a compromise, appeared to be the main "style" of Macedonian politics. See the section on the forms of government. Also, in the e-mail interview from 17th December 2008, professor Hristova underlined the lack of cooperation between the political blocks, while in the last EU report the political dialogue is underlined as a necessary step towards the integrations.

[643] See the section on the form of government.

[644] "The main difference beside the number of parties is that political fragmentation normally increases the 'blackmailing potential' and decreases the 'coalition potential' (see Lijphart, 1977: 61–65). In other words, the more parties existing on each side and the smaller they are, the more unlikely it is that a stable coalition between each segment's major parties will be formed", Schneckener, 2002, p. 214). For the list of the conditions favouring the power sharing, please see Schneckener 2002.

his criticisms to power-sharing in the democratizing societies: instead of depoliticizing the ethnicity, the power-sharing created the incentives for the political elite to use the nationalistic rhetorics in their struggle for power:

> "The power-sharing approach is especially problematic in the context of a democratizing society. Power sharing, as Lijphart conceives it, depends on mass groups deferring to the judgments of moderate elites who represent their ethnic segments. However, deference can hardly be taken for granted in democratizing societies. Mass groups clamoring for a greater say in politics will use any available argument, especially the argument that traditional elites are selling out the nation's interests by being too accommodating towards outsiders. In this context, elites jockeying for power within the ethnic group often have an incentive to be immoderate. Institutionalized power-sharing exacerbates this by defining all politics as ethnic politics. As mass groups enter the political process, any one who wants to participate must go through ethnic channels. Mobilizing support by definition means making sectarian appeals. Cross-ethnic politicking is reserved to elites, who may be too pressured from below to be accommodating towards the elites of the opposing community" (Snyder, 2000, p. 330).

In the sections dedicated to decentralization, civil service reform and constitutional issues, we showed the examples of how the ethnic Albanian elite was maximizing its requirements for further strengthening the Albanian ethnic minority, while in the chapter on the forms of government we analyzed the competition of the Albanian party system underlining the prevalence of the nationalistic electoral platforms and the competition centered around the question of the traitors and protectors of the Albanian ethnic group.

Beside consolidating and institutionalizing the inter-ethnic conflict[645], the persistence of the nationalistic rhetorics also hampered the full development of the democratic institutions. The implementation of the power-sharing solutions created mechanisms that are the basis for the shortcomings of Macedonian democracy we identified in the different analyzed dimensions. The decision-making process is moved from the parliament and public debate to the un-transparent process within the executive, where the intra-party/intra-ethnic bargaining and logrolling prevail. The result is the adoption of laws that, instead of solving social problems, sacrifice the public good to the political elite's narrow interests (see for example the section on the decentralization and in particular the Law on Municipal Borders), while the principle of equal representation is interpreted in a manner that directly hampered the professionalization of the bureaucracy. The universalistic, citizen-based principles of democracy were hampered as power in Macedonia, rather than from citizens as underlined in the constitution, comes from the ethnic communities[646].

[645] On the institutionalization of the ethnicity see Bieber, 2004.
[646] From the e-mail interview with Hristova, 18/12/2008.

The prevalence of the inter-ethnic conflict significantly shaped the democratization process, producing unequal cross-dimension developments as we pass from the issues concerning the inter-ethnic relations to those concerning the government's accountability. The assessment of the rule implementation in Table 1 shows the clear distinction between the two patterns. We can thus notice that Macedonia achieves the best scores in the implementation of those laws of particular interests for the Albanian ethnic group (decentralization, minority rights, ombudsman, the provisions of the civil service reform that concern equal representation, the provisions of the police reform that concern the decentralization and equal representation of the police forces), while at the same time the fight against corruption, the professionalization and depoliticization of the civil service, the accountability and human rights respect of the police forces, media freedom and the participation of the civil society are particularly difficult to implement.

The mechanisms that hamper the democratization in post-Milošević Serbia are of different nature, even though the final outcome is similar. The nationalism enters this picture only as a cover, rather than a cause for the lack of accountability of the ruling elite. It represents a political instrument inherited from the previous period, and as we will argue in the sections to come, it is strongly linked to the Serbian foreign policy. In this chapter, nationalism is important due to the existence of strong nationalistic, "anti-system" party, whose presence produced the centrifugal competition in the party system[647].

Immediately after the fall of Milošević's regime, Serbia experienced a positive period that appeared favourable for the democratization of the country. The laws that were adopted and those drafted in this first cycle of the Serbian democratization show a high level of democratic potential. Yet, this positive period lasted only a year and a half, after which the dissolution of DOS and the re-emergence of nationalism resulted in the polarization of the party scene. A short period of stagnation and crisis took place, culminating in the assassination of the Prime Minister, the final dissolution of DOS and the fall of the government. After the 2003 parliamentary elections, the polarized pluralism of the party system, a characteristic already underlined by Goati when referring to the "90s, appeared institutionalized.[648] In the period

[647] In the classical term of the "anti-system party" as the party that questions the political regime, SRS could not be completely seen as an anti-democratic party, as they nominally adhere to the democratic norms. However, the mechanisms of the competition of this party, and its strong opposition to the domestic developments, particularly to the Serbian foreign policy, delegitimization and not-acceptance of the democratically elected elite, the high polarization that the existence of this party introduces, the centrifugal competition, and the extreme positioning justify such label.

[648] See Goati, 2000, 2001, 2002.

2003-2008 Serbia showed all characteristics identified by Sartori (1972) as typical for such asset, radicalization and breaking of the center included (beginning of 2008). Yet, the shock caused by Kosovo's unilateral independence and the changes in the party system in mid-2008 do not appear to have significantly changed the ideological distance of the political spectrum. The emptying of the centre brought to a short period of redefinition of party ideologies (in particular DSS, SPS, part of the SRS), after which the system appeared rather similar to the one at the beginning of 2003, with few pretenders on the central position, a new entry due to the secession of one part of SRS, and a weakened party of the extreme right (SRS).

The nature of the party system significantly influenced the strategies and preferences of the political actors, which was further reflected on the democratization process. The centrifugal competition resulted in the strengthening of the central actors (DSS) who, due to the extremely favourable positioning which made it be an unavoidable partner in any coalition, withdrew itself from the electoral accountability. This brought to the peripheral turnover and the consequential irresponsibility of both the opposition and the ruling elite. The lack of electoral accountability and the security of the ruling elite's position are particularly harmful in the early phases of democratization, when the mechanisms of inter-institutional accountability are still not developed. Rather sure of his position in the government, Koštunica was not motivated to introduce mechanisms limiting the power of the ruling elite. The characteristics of that third cycle of Serbian democratization are thus strongly influenced by the nature of the party system that shaped the incumbent elite's structure of opportunities. In almost all legislations adopted in this period we registered the failure to establish mechanisms of accountability and the subordination of the newly formed institutions to the simple parliamentary majority.

Another feature that seriously hampers Serbian democracy is the introduction of the imperative mandate and the strengthening of the party control over the deputies. Established already in the 2000 electoral law, and finally constitutionalized in 2006, the party control seriously interfered with the relations among parties, government and assembly, strengthening the narrow political leadership. Combined with the undemocratic nature of the Serbian political parties and the practices of almost authoritarian leadership[649], this provision actually concentrated all power in the hands of the few political leaders in charge. Enjoying absolute control over the assembly, this narrow elite circle obtained the control of all those institutions controlled by the majority in the assembly (especially the judiciary). The lack of solid

[649] See Goati, 2006.

mechanisms of inter-institutional accountability we described, and the lack of electoral accountability caused by the type of the party system are thus combined with the complete absence of inner-party democracy and with the incapacity of the deputies to control their leaders. Even in the clamorous corruption scandals in the government, the politically controlled judiciary failed to initiate the process, while the deputies, responsible to their parties and not to their electorates, had neither instruments nor incentives to make their leaders accountable. As Pešić argues, this resulted in the "feudalization of the government" where the only mechanism of accountability is the one towards the coalitional partners, which results in the division of the sphere of interests, no interference, the prevalence of the "rule of deal" over the rule of law which represents the basis for the state-capture in Serbia[650].

In this section we analyzed the outcome of the democratic transition in Serbia and Macedonia, underlining the main deficiencies in the two countries and offering the illustration of the domestic mechanisms that supported such shortcomings. However, the domestic factors we underlined as the main obstacles to full democratization in the two countries are not capable to offer a full insight of the process that took place in the analyzed cases. First of all, the inter-ethnic conflict and the perils of the power-sharing are not capable to explain the seven-year long peace in Macedonia. What succeeded in maintaining the fragile Macedonian peace, under the very unfavorable conditions we described? How come did the Macedonian nationalists, enjoying significant numerical advantage, accept the power-sharing mechanisms that strengthened the ethnic Albanian elite? What keeps the ethnic Albanians from advancing the secessionist requirements and strategies, similar to those that brought to the independence of Kosovo? How is it possible that the most successful changes were introduced in those dimensions that directly tackle the most salient cleavage of Macedonian society (the inter-ethnic conflict)? Finally, where did the legislative framework respecting the highest international standards come from?

Similarly, in Serbia's case we also have some questions that can not be explained by a study concentrated on purely domestic factors. First of all, what brought to such quick dissolution of DOS? How did nationalism and pro-nationalistic parties gain strength after the defeat they suffered in the aftermath of the regime fall? Why did Kosovo's unilateral independence, condemned and contested by all Serbian political parties, cause the increased polarization, shock and re-structuring of the party system?

[650] See the section on the form of government and on the economic issues.

In the following sections we will examine the factors included in the revised EUCLIDA theoretical framework, arguing that fully understanding both the Serbian and the Macedonian democratization processes requires that the international dimension (both the direct influence of the international actor, but also the process of international anchoring) are taken in consideration.

20.2. The EU Factor: the Supply Side

In this work we tried to develop an analytical framework for studying the international influence over the democratization process that would be capable to account not only for the democratization and consolidation, but for the crisis and possible failure as well. We identified in Morlino's anchoring theory and in Morlino and Magen's EUCLIDA analytical framework a potentially fruitful basis upon which we built the EUCLIDA revised model by adding three more factors, all concerning the supply side: the IA's interest, approach (content of the promoted norms and the channel of influence used to promote the norms) and organizational capacity. The following sections will be dedicated to these "supply-side" factors of revised EUCLIDA. As we will see in the next sections, each of these factors appeared particularly relevant for understanding the impact that the EU had on the democratization process in Serbia and Macedonia, justifying their inclusion in the theoretical framework. Further on, we will see how the factors identified on the supply side influence one another quite in line with our hypothesis: the international actor's interests contributed to shape the IA's priorities and the content of the promoted rules, and at the same time had an impact on the strategies chosen by the international actor, being, on its turn, influenced by the domestic developments and the feedback of the anchoring process.

20.2.1. International Actor's Interests and Priorities

In line with Whitehead's observation on the importance of the International actor's interests in analyzing its impact on the domestic regime change, our theoretical framework releases the assumption about the international actor genuinely interested in democracy promotion[651]. We do not consider the international actor's interests as given, but on the

[651]The prevalent approach in the analysis of the EU impact over democratization in the Eastern and Central Europe consists in assuming that the EU is promoting democracy and then to consider the EU's interests as a factor hampering the EU's credibility of action.

contrary, the interest of the international actor in both promoting the democracy and integrating the target state represents one of the most important factors on the supply side of the revised EUCLIDA theoretic framework. It significantly influences the entire process as it is the base upon which the strategy of the IA is developed. The main questions we made in the theoretical part were: 1) whether the IA is more interested in the democratization of the target state or in the creation of economic, military or other linkages with the given state; 2) what is the main interest guiding the EU's democracy promotion actions: is it the value-guided action of spreading democracy around the world, or some other goal (strategic, military, economic etc) that is supposed to be easier to achieve through the democratization of the target state; 3) Finally, how are the interests of the international actor interpreted and operationalized to influence the choice of the norms that will be promoted in the specific target state. The main hypothesis is that in those cases where the process is guided by interests *other* than the spreading of democracy, the IA could even choose to sacrifice the democratization of the target state, should it turn out to be a threat to the main goals of the IA.

Since the fall of the iron curtain at the beginning of the '90s, democracy promotion became the hallmark of the EU's policy towards the former communist countries. The EU became one of the most active and, seen the experience of Central-Eastern Europe, most successful democracy-promoting international actors[652]. While the importance of the democratic values for the EU are doubtless and the promotion of the democratic values and freedoms were included in the very first documents of the European Community, this still does not exclude that the EU actions in a particular case might be guided by concerns other than the value-oriented desire to spread freedom around the world.

Of particular importance in analysing the EU interests in the democratization of Macedonia and Serbia is the link between democracy and peace, so often underlined by the liberalistic theories. As Mattina argued,

> "the fall of the USSR allowed the EU to develop its particular way of acting in the foreign policy, i.e. linking the security issue to democracy, starting from the assumption that the latter, when supported by a strong market economy, represents a guarantee for the stability on the continent" (Mattina, 2004, p. 14, *translated by IM*).

[652] On the conditions the international organization shall fulfill in order to successfully promote democracy see Pevehouse, 2002. On the supremacy of the EU over other international actors to successfully use different channels of influence, see Magen, 2004.

While democratization became the instrument for security and a strategy of foreign policy, the enlargement soon turned out to be the carrot offered to the countries in order to induce them to accept the democratic rules of the game.

Many documents of the EU Commission, as well as the statements of the Commissioner for Enlargement, underlined this link between the EU security concerns and the enlargement as a particular instrument of the EU foreign and security policy. This is particularly true for the EU approach to the Western Balkans, where the violent inter-ethnic conflicts during the '90s increased the EU's concerns of maintaining peace in their own backyard. The Commission report (1996) on the Common Principles for the Contractual Relations with the Balkan States, testifies that the security concerns shaped the EU's approach to the Western Balkans:

> "The overriding objective of the European Union's action in South-Eastern Europe is the successful implementation of the Dayton/Paris peace agreements and the creation of an area of political stability and economic prosperity, also by fostering the process of political and economic reforms, and the respect of human and minority rights and democratic principles. (…) Due to geographic proximity, the European Union has a particularly great interest in peace and stability in the former Yugoslavia. The area is surrounded by Member States and associated countries, and the spreading of political and military conflicts and the economic crisis on its own present and future territory must be avoided. (…) Agreement with these countries should be negotiated at a time and with a content so as to make a maximum contribution to the stability in the region" (Report from the Commission to the Council and the European Parliament, com (96) 476 final).

Even after twelve years of this commission report and seven years after the last inter-ethnic "war" in the Balkans (Macedonia, 2001), in a moment when most of the Western Balkan States improved their relations with the EU, the security-guided conception of enlargement, as a tool of foreign policy and democratization, and EU integrations, as guarantees of the EU security, still are the prevailing item when it comes to the question of the Western Balkans. In the most recent communication from the Commission to the Council and the European Parliament on the enlargement strategy and main challenges for the period 2008-2009, a similar argumentation for integrating the Balkans into the EU is found:

> "Enlargement is one of the EU's most powerful policy tools. It serves the EU's strategic interests in stability, security, and conflict prevention. The present enlargement agenda covers the Western Balkans and Turkey, which have been given the perspective of becoming EU members once they fulfill the necessary conditions. The European perspective has contributed to peace and stability, and enabled partners to cope with major challenges, such as Kosovo's declaration of independence, while maintaining regional security. It provides strong encouragement for political and economic reform in both the Western Balkans and Turkey. It is in the EU's strategic interest to keep up the momentum of this process, on the basis of agreed principles and conditions. This interest to project stability is all the more apparent in the light of recent challenges to the Eastern EU's stability, including in southern Caucasus. The present security environment in Europe also calls for the consolidation of stability and enhancement of the reforms in the Western Balkans. The European Union is stronger with stable, prosperous and democratic neighbours.

> Enlargement serves the EU's strategic interests in stability, security and conflict prevention. It has helped to increase prosperity and growth opportunities, to improve links with vital transport and energy routes, and to increase the EU's weight in the world" (Communication from the Commission to the Council and the European Parliament, Enlargement Strategy and Main Challenges 2008-2009, COM 2008, 674 final).

Yet, saying that security was the main concern in the EU approach to the Western Balkans, and therefore to Macedonia and Serbia, is not enough for understanding the process. It only mean that democratization might be sacrificed to the security concerns, but whether this was the case or not, it depends on the particular interpretations of the security and democratization issues, as well as on the particularity of the target state. However, here we enter a rather difficult terrain for assessment, for the fact that democracy promotion is commonly used as a legitimization even for those actions that actually do not have much to do with the democratization.

In Macedonia's case, the EU security interest mainly consisted in avoiding the inter-ethnic conflict between the ethnic Albanians and ethnic Macedonians. It thus concentrated to the implementation of the OFA agreement, which appeared to be the central priority of the EU's policy in Macedonia. Since 2001, most of the EU funds were conditioned by the respect and implementation of OFA, and the dimensions of policy tackled by the peace agreement absorbed great part of the EU financial assistance. But did the Ohrid Framework Agreement, the key security priority, hamper or develop the democratization in Macedonia?

As we argued in the section on democratization, the power-sharing mechanisms built in the peace agreement actually made both the democratization and the de-ethnicization of the political discourse more difficult. But as the inter-ethnic power-sharing is one of the approaches considered by many eminent scholars as the best recipe for both stabilization and democratization of divided societies[653], this means that the negative effects of the power-sharing and the EU insistence on the power-sharing mechanisms, rather than showing the prevalence of the EU security concerns over the spread of democracy as a goal, should be seen as the (adequate or less adequate) choice of content of the norms to promote. In order to assess whether the EU security concerns might bring to neglect the need for democratization, we should pay attention to the possible existence of situations in which the security and democratization goals were in conflict, deducing the prevailing EU interest from the EU's choice in such circumstances.

[653] See for example the various works of Lijphart.

As we showed in the empirical part of the analysis, in several occasions the EU tolerated the undemocratic behavior and the abuse of power by the domestic stakeholders in exchange for the rule adoption. Surely the most clamorous example was the Macedonian referendum on the Law on Municipal Borders in 2004, when the EU failed to react to the serious intimidations and violations of the electoral law undertaken by the government in order to ensure that the referendum fails and the Law on Municipal Borders remains in force. Moreover, the EU opposed the use of the referendum as an expression of the citizens' protest against the law drafted by the narrow political leadership of two ruling parties, it supported the ethnically-based solutions hampering the functionality of the future municipalities and it failed to react to the violations of the OFA principles and European Charter on the Local Self-Government. Similar tolerance for non-transparent decision-making, abuse of power and violation of the good democratic practices also registered in the constitutional reform of 2001, in the electoral reform of 2002, in the appointment of the Ombudsman and in fostering the equal representation in the civil service (see the relevant chapters). Obviously, such decision of the EU was clearly guided by its preoccupations for the continuous inter-ethnic tensions to which Macedonian political life is exposed. The content of the Ohrid Framework agreement, the decentralization process in Macedonia and the constitutional reform in 2001 all were highly conflictive issues: the OFA was a peace agreement bringing an end to the inter-ethnic violence, while the constitutional reform and the decentralization, key elements of OFA, were further ethnicized by the political elite bringing to the increase of the security concerns. In such assets, the EU decided to play the role of the mediator between the two ethnic groups, supporting whichever solution the incumbent Macedonian and Albanian elite would agree upon and promoting what, at the prevailing market place of ideas, appeared to be the best solution: inter-ethnic consociationalism.

In Serbia's case, the situation was far more sensitive, as, due to the Serbian involvement in the outbreak and war in former Yugoslavia and due to its importance for the stability and peace in the region, the EU action in the country was clearly security-guided, aiming, first of all, to ensure peaceful solutions for the Montenegrin and Kosovo independence. However, in the analyzed period, the interpretation of the security concerns into the concrete action and the understanding of the link between democratization and security underwent some important changes that reflected the domestic developments. In the first period of transition (2001-2002), the democratization was perceived as the best mean for stability and peace in

Serbia, and the two goals were mutually reinforced. The forces supporting democratization were at the same time pro-European, pro-integration, anti-Russian and anti-nationalistic. The problem rose when the dichotomy "authoritarian regime + nationalism + foreign policy oriented towards Russia and China" vs. "democracy + European integration" broke apart. The rise and strengthening of the nationalists who embraced the agenda of economic and political reforms[654] but opposed the EU integrations and west-oriented foreign policy brought to a change in the relations between EU security goals and democracy promotion. The protection of the international actor's security ad strategic interests was therefore no longer only the democratization of Serbia, but since 2003 it also implied a preference for the specific distribution of power between the domestic actors. We will see in the section about the channels of influence how this preference influenced the EU strategies towards Serbia, inducing it to take measures that are against the democratic practice and that contributed hampering the democratization process.

In Table 2 we bring the assessment of the interests that guided the EU actions in the single areas of policy, together with the assessment of the compliance with the norms promoted by the EU. In Macedonia's case it is almost striking how the level of compliance is linked with the interest of the EU: in all fields where good compliance was registered, the EU action was guided by the security concerns. This is not to say that the security concerns on the supply side directly increase the response on the domestic level. All issues in Macedonia where EU action was security-guided were, as we saw in the chapter about the democratization, those that tackled the inter-ethnic relations, and, as we will see in the analyses of other factors of EUCLIDA framework, these issues showed particularities on other dimensions as well. Moreover, as we will see in the section dedicated to the channels of influence used, there appears to be a link between the prevailing EU interest in the particular dimension and the strength of the conditionality applied. Rather than directly influencing compliance, the interest of the international actor appears to be an important element influencing the choice of the particular promoted norms and the choice of the used strategies. If we link this result to the main studies on the EU democracy promotion, we can notice how the factor "IA's interests"

[654]Among the main political goals of the nationalistic SRS we find the promotion of the reforms in many of the dimensions included in this study: the independence of the judiciary, the depoliticization of the civil service and the creation of a professional, efficient bureaucracy, the fight against corruption and organized crime, the strengthening of the units of local self-government (but opposition to the regionalization). Further on, during the five-day long nationalists' presidency in the parliament, the leader of the nationalistic SRS was very careful to fully respect the good norms of the parliamentarianism and it was during these five days that the national minorities, following their request, were assigned the interpreters and allowed to speak in their mother tongue.

tackles two of the most salient dimensions identified in this literature: the "credibility" of the IA's action and, in a certain sense, the level of misfit between the promoted norm and the domestic status quo. The IA's interests thus become the factor that determines both the choice of the action (the stronger the interest in reaching the compliance, the "harder" channels of action will be used: i.e. when the stakes are high, conditionality is preferred to the social influence or social learning, or the different strategies will be combined together) and the strength with which such action is exercised (the size of reward offered when conditionality is used, the amount of the resources invested etc.[655]). As far as the level of misfit is concerned, the interests of the international actor and their practical operationalization into the norms to be promoted influence the content of the requirements, thus indirectly influencing the level of misfit between the domestic rules and the promoted rules. At the same time, the interests of the IA and their practical interpretations are strongly influenced by the domestic situation and developments, so that during the process it can undergo some adjustments or even significant changes, as we saw it was the case with Serbia.

[655]This point will be further examined and empirically documented in the section dedicated to the channels of influence.

Table 2: "Interests of the EU in promoting specific norms in Macedonia and Serbia".

Dimensions	Macedonia	Serbia
Constitutional issues	2001-security 2005-democratization Good Compliance	Democratization Partial compliance
Decentralization	Security Good Compliance	Democratization Compliance initiated only recently (still not implemented)
Form of government	-	Security - (the EU interest of keeping SRS away from power was satisfied)
Civil Service (equal representation)	Security Good Compliance	-
Civil Service (professionalism)	Democratization Partial Compliance	Democratization Partial compliance
Judiciary	Democratization Partial Compliance	Democratization Lack of Compliance
Fight against corruption	Democratization Fake Compliance	Democratization Fake Compliance
Police reform (issues concerning the equal representation)	Security Good Compliance	-
Police reform (issues concerning the accountability of the police forces)	Democratization Partial Compliance	Democratization/security Partial Compliance
Civil control over military	-	Democratization/security Compliance initiated only recently
Right to vote	Democratization Partial Compliance (see section on right to vote)	Democratization Partial Compliance (see section on right to vote)
Media	Democratization Partial Compliance	Democratization Partial Compliance
Civil society	Democratization Partial Compliance	Democratization Lack of compliance
Minority rights (concerning Albanian ethnic minority)	Security Good Compliance	-
Minority rights (concerning other ethnic minorities)	Democratization Partial Compliance	Democratization/security Compliance
Ombudsman (issues concerning minority rights	Security Good Compliance	-

and equal representation)		
Ombudsman (protection of other human rights)	Democratization -	Democratization Partial Compliance
Cooperation with ICTY	-	Security/international justice Compliance varied in time.
Kosovo issue	-	Security - (overly, the EU interest to avoid the inter-ethnic conflict was satisfied)
Name dispute	Diplomacy -	-

20.2.2 The Supranational Organization's Capacity

The supranational organization's capacity in promoting the norms is another important factor of the revised EUCLIDA theoretical framework, as it directly influences the choice of the strategies for rule promotion and their credibility. Unfortunately, the range of this study, which was mainly concentrated on the EU as an external actor and only sporadically tackled other international organizations (like OSCE or CoE), does not allow a proper comparative assessment of the impact the IA's organizational capacities on the success of the democracy promotion. However, in this section we will summarize the remarks that emerged during our study, in hope to offer potentially useful insights for further research.

In the theoretical chapter we distinguished between different resources an organization can control and use for promoting the rules in the target states. Here we will shortly reflect on each of these resources and their importance for the EU democracy promotion in Serbia and Macedonia.

The material resources of the IA referred to the security, richness, preferential agreements, cooperation in particular policy areas and financial resources the organization controls. These are particularly relevant when the IA is using conditionality as a strategy for rule promotion, as they represent the goods that might be offered as incentive/compensation for compliance with a particular norm. Due to its nature, the EU is particularly rich in the material resources on its disposal. The access to the EU common market of goods, capital and labor represents an enormous EU resource that makes the membership – or the preferential agreement with EU – a particularly attractive incentive. When referring to Serbia and Macedonia, both countries with credible perspectives for the EU membership, the access to the EU funds, the security and prestige coming from the membership in the EU (security being of particular importance to Macedonia), and finally, the possibility to access and participate to the EU decision-making process are all particularly important. However, as we saw in the chapter dedicated to the economic issues, the capacity of the EU to successfully use its material resources strongly depends on the attractiveness of a particular incentive for the influential domestic actors. If we release the assumption of the nation-state as a unitary actor and perceive a state as made of different groups with different interests, we can notice how the interests of these groups concerning the EU incentives might differ. We thus saw in Serbia's case how the opening of the market and the preferential trade agreements with the EU, while generally conceived as an important incentive the EU can use to influence the domestic policy, are not necessarily welcomed by all relevant domestic actors. Similarly, the integration

into the EU, that in many theoretical models is assumed to be the strongest incentive the EU can offer, is not necessarily perceived as a reward by all the relevant domestic actors. Finally, the financial assistance offered by the EU is not equally distributed between the domestic actors and, as we saw in the chapter on the economic issues, in some cases it might have important effects on the domestic distribution of wealth and power. Such findings bring to two important conclusions: from a theoretical point of view, it draws the attention on the distinction between the material resources of the IA and the possibility that such resources are successfully used in promoting the compliance with particular norms. The availability of the material resources a particular IA controls represents only the *potential* source of influence, but whether or not the IA's incentives will bring to compliance will strongly depend on the relevant domestic actor's perception of such incentives and on the possible distributive/re-distributive effects that the incentives can produce. This also means that, whenever analyzing the external impact on the domestic politics, we can not assume that the material resources controlled by the IA and the incentives that the IA can offer are necessarily perceived by the domestic actors as a reward, and this is true even for those incentives, like the EU membership, that are traditionally assumed to be attractive for all domestic actors. The plurality of the groups within the target state, the distribution of power among them and, in particular, their interests not only towards the content of the promoted norm but also towards the offered reward should be included into the analysis. From the prescription point of view, this practically means that the "one-size fits all" template is not only inefficient when referred to the content of the promoted norms[656], but also the equivalent "one reward fits all" conception should be abandoned. When choosing the incentives to offer, the policy makers should pay particular attention to the possible distributive effects the incentives can produce, understanding that, due to the pluralism of groups and interests within the target states, what might be a reward for some can be perceived as a threat for others.

The EU material resources, and thus the EU leverage on the two studied countries, significantly increased with the two rounds of enlargement that took place in the analyzed period (2004 and 2007). As we saw in the chapter on the economic resources, this was particularly true for the last enlargement to Bulgaria and Romania, both important trading partners of Serbia and Macedonia. The short period of time that passed from this enlargement, however, does not allow us to assess the impact that this increase of the EU

[656]For the "one size fits all" as the characteristic of the EU approach in the democracy promotion, see Borzel and Risse, 2004.

leverage had on the rule-promotion success rate, but the economic figures show that the vulnerability of both Serbia and Macedonia to the EU trade regulations, as well as the impact of the EU visa-regime, have particularly tackled both analyzed countries (in the chapter on the economic issues we saw how, due to the last two enlargements, both the Serbian export and import with the EU increased from 42-40% to 59%, while for Macedonia the increase in the import from the EU was from 45% to 62%). Furthermore, in Macedonia's case, the material incentives offered by the EU appear to have particular relevance. As reported by Jovanovksi, Head of the Information Office of the Council of Europe in Skopje, the drastically different compliance of the Macedonian authorities to the recommendations of the CoE and to those coming from the EU derives from the differences in what we labeled as the organizational capacity of these two organizations: "The CoE is a value-based institution, not interest-based like the EU is. It can not condition, it can not exercise strong pressure, as the country is already a member. It has far less material resources than the EU. It offers a partnership to the government, a guide for the reforms, an important hand in the process of democratization, but does not and can not impose them. But the Macedonian government is not interested in such approach. They don't want an advice, because they don't want to reform. The EU carrot is thus far more attractive for them".[657] On the contrary, in Serbia such value-based nature of the CoE, its softer strategies and the vast membership that includes Russia as well, significantly increased the perceived legitimacy of this institution. In their presentation of the bill proposals in the analyzed dimensions, the Serbian government was more often referring to the democratic standards of the Council of Europe, or to the Venice Commission or OEBS recommendations than to the recommendations of the EU. When calling for the EU as a source for particular solutions, the language of conditionality is much more present than that of socialization: unlike the "democratic standards and recommendations of the CoE", when it comes to the EU usually the ministers justify their proposal by underlining that a particular law is "important for the Serbian integration into the EU"[658].

Here we arrive to another set of resources, the social resource of the IA. The social or symbolic values referred to the values the organization is based on, the authority and prominence of its members and the symbolic weight the organization has. These resources are decisive for the successful usage of the strategies based on the socialization mechanisms. In this light, of particular importance is the respect for the democratic norms in the member

[657] From the interview with Jovanovski, August 2008, Skopje.
[658] For the differences between the EU and CoE in the tactics used, see Checkel, 2000.

states, as the level of respect for the democratic values within the organization significantly influences the legitimacy of the IA when promoting the democratic values outside. From this point of view, the EU is also particularly rich, as the old member states were all long-established, well-consolidated western democracies. In all fields of the "EU democratic package", the EU Member States do have an important positive record in compliance (the rule of law, independence of judiciary, administration, respect of human rights). However, due to the diversities of the institutional designs among the member states, while the general call for the respect of the democratic norms can be considered legitimate, this can not be said for the particular solutions recommended, for there is no model of judiciary, administration, territorial organization, institutional design common to all member states. This significantly influenced the capacity of the EU to promote specific solutions in the target states[659]. From this point of view, any break of the democratic norms in a EU Member State heavily resonates in the target states: the Greek refusal to recognize the existence of the national minorities in Greece, the recent intolerance for the immigrants in Italy, the high level of corruption in Bulgaria and Romania, all these issues are frequently used by the target state's government to diminish the EU legitimacy when criticizing the domestic governments for the lack of compliance. When compared to the CoE, it is interesting to notice how, in Serbia's case, even though the CoE membership is granted to the states that can hardly be considered democratic, the legitimacy enjoyed by the CoE is higher than that of the EU. This is, obviously, partially a consequence of the existence of strong anti-EU political options in Serbia, but it might also be linked to the strategies used by the actors. It is possible to hypothesize that the harder the measures applied and the stronger the influence exercised, the more incline the domestic actor are to diminish the vulnerability towards the IA's leverage, which in some cases might bring to questioning the legitimacy of the IA's action.

Of particular importance in Serbia is the lower level of the EU legitimacy when making requirements linked to *other* political issues. As the Serbian authorities are often underlining when it comes to the issue of Kosovo, no EU Member State has ever been required to pay its entry into the EU with a portion of its territory. Similarly, the EU requirement to Serbia to cooperate with ICTY, seen that the tribunal is perceived in Serbia as politicized and anti-Serbian, is considered illegitimate by many citizens. In a context with strong anti-European forces present, the engagement of the EU in promoting the rules in those areas where its

[659] For an example on how the lack of judiciary structure common to all Members States influenced the EU rule promotion see Piana, 2005, Piana, 2006.

action is perceived by the domestic public opinion as illegitimate is used to undermine the overall credibility of the EU and to diminish the country's vulnerability to the EU social influence.

Another important organizational resource derives from the institutional design of the international organization. While on one side the political regime, the distribution of authorities and the decision-making process are important for the legitimacy of the IA's action (for an organization which is de iure or de facto ruled by undemocratic practices is unlikely to be perceived as legitimate when promoting democratic norms), on the other they are also important for the credibility of the commitments made by the organization. In this light, the EU decision-making process in the field of enlargement and the veto powers each single member state has over the access of new member states is often perceived in the target states as the issue undermining the credibility of the promised membership. The overview of the press in both Macedonia and Serbia testifies the great attention of these states for the EU domestic affairs. The failure to adopt the EU's constitution and the crisis of the EU institutions, the global financial crisis and its impact on the EU economy, the decision of the EU to diminish the funds prior to the access of the Eastern-Central European countries and the assessment of the costs of the enlargement are all issues to which the domestic public is paying a lot of attention, basing on such news their assessment of the credibility of the EU promises. Further on, the institutional design of the EU and the strong influence the member states have on the EU's security and foreign policy can also significantly influence the credibility of the EU conditionality. Whenever there is a divergence between the interests of the single member states and the official position of the EU, the political elite of the target state can hope to use this discrepancy to achieve the reward without the compliance with the promoted norm. The weaknesses of the EU, deriving from the EU's institutional design and distribution of power between the EU institutions and the national governments of the single member states, represent an important factor influencing the credibility of the EU activity in the target states and, in some cases, they can prove to be the most serious obstacle to the decisive, credible action of democracy promotion.

Finally, the EU was also successful in using its well-developed networks with other regional and global organizations. In the section on the promotion of the anchors we underlined how the EU was using its influence to promote the compliance with the recommendations made by other international organizations (CoE, OSCE, ICTY, IMF to mention only some). This

cooperation was two-fold. By embracing the agenda of the other IA, the EU is capable to make use of the partner's resources. Thus, as Jovanovski stressed, in the field of the human rights the EU is completely relying on the CoE and its monitoring mechanisms[660]. A similar approach was also reported by Manevski, an OSCE representative, who underlined how the EU relies on their office assessment on the freedom of the press[661], while in the section dedicated to the promotion of the other anchors we saw how the same approach was used in the promotion of norms concerning elections (rely on the OSCE/ODIHR recommendations), corruption (GRECO and CoE offering the monitoring) and civilian control over the military (Geneva Center for the Control of Armed Forces).

20.2.3. The IA's Approach: Content of the Norms Promoted

What we refer to when speaking about the *content* is the set of rules the IA is requiring the compliance with. For analytical purposes we distinguished between the "democratization package", referring to the norms that concern the political regime in a given country and whose goal is to bring to the establishment and consolidation of the democracy in the target state and the "integration package", which refers to all other norms promoted by the IA (some of which were examined in the chapter named 17, 18 and 19). The distance between the content of the norms promoted and the domestic rules in the particular field is known in literature as the level of "misfit" (Bulmer and Radaelli, 2005) and it represents the "adaptation pressure" (Borzel and Risse, 2000), a factor that is considered as one of the crucial factors influencing the compliance. Both the costs of compliance and their distribution among the domestic actors are directly influenced by the content of the norm promoted, which makes this factor particularly important for our theoretical framework as well (see Morlino and Magen, 2008). Further on, the EUCLIDA model hypothesizes that the linking between the two separate processes of democratization and integration offers the possibility for cross-issue compensation (or attenuation) of the costs and benefits, where the costs one actor suffered from the compliance in one area might be compensated by the benefits of the compliance in other areas of policy. In such case, the assessment of the impact of the content of the "anchoring package" implies not only the analyses of the impact of the single norms promoted, but, more important, the analyses of the combination of the costs and benefits deriving from the entire process of the anchoring. This means that the inclusion or exclusion

[660] Interview with Jovanovski, August 2008. Skopje.
[661] Interview with Manevski, August 2008, Skopje.

of the particular issues in the democratization or boundary removal package and the developments in that particular policy can have serious consequences for the entire process of the international democratic anchoring.

As in the empirical parts of this work we saw the content of the norms promoted by the EU in different dimensions of policy[662] and the impact the particular content had in the analyzed dimensions, in this section we will ponder on the general impact the choice of the "EU package" had for the anchoring of Serbian and Macedonian democracy.

When assessing the level of democratization in the two countries, we underlined the importance the Ohrid Framework Agreement and the power-sharing instruments had for the process of democratization in Macedonia and for the establishment of the mechanisms hampering the full democratization in this country. An overlook on the dimensions in which the EU concentrated the largest part of its intervention in Macedonia clearly shows the salience of the issues concerning the inter-ethnic division of power, while the particular solutions promoted testifies the strong influence of consociational theory and its recommendations for managing the divided societies. However, before claiming that it was the particular content chosen by the EU to influence the democratization in Macedonia, we should first wonder whether other, alternative solutions were available for managing the Macedonian inter-ethnic relations. If no other solution was available, then the content of the EU set could not vary, and thus it would be erroneous to claim that it was the particular approach of the EU to produce the registered effects.

· As different scholars argued, when managing the divided societies there is an alternative to Lijphart's model of the consociational democracy and inter-ethnic power-sharing. One of the most influential criticisms of the power-sharing mechanisms comes from Horowitz, who developed an alternative model according to which a more integrative approach, capable to offer the incentives for the cross-ethnic political alliances is the most suitable solution for the inter-ethnic conflicts[663]. The very Ohrid Framework Agreement seems to follow the recommendations coming from both sources: while prescribing the decentralization and equal representation (two remedies proposed by Lijphart), it also tried to maintain some of the civic features of the state by underlining democracy and rejecting the territorial solutions for the inter-ethnic conflict (Daftary 2001, cited in Bieber, 2004, p. 5). However, as we saw, the

[662] For a systematized overlook of the recommendations for each dimension, please see the Tables on the EU priorities in the appendix of each section.

[663] See Lijphart, 1990; Horowitz, 1990. For a discussion of Lijphart's and Horowitz's approaches, see Snyder, 2000.

interpretations of the OFA and its implementation radically deviated from any civic feature the OFA prescribed.

The analysis of the literature on the inter-ethnic conflict management shows the existence of the theoretical alternative to the one prescribed by the Lijphart[664]. The history on the other hand shows some practical examples of both approaches. To stay in the Balkan area, we can recall the peace agreement between the Serbian minority and the Croatian majority that was included in the Dayton package, which brought the inter-ethnic violence in Bosnia and Croatia to an end. The Erdut Agreement, which represented the basis for peace in Croatia, is strongly concentrated on the protection of civic, political and human rights and does not include any of the inter-ethnic power-sharing mechanisms. With the constitutional and electoral reform in 2000, under strong pressures from the international community, some of the weak forms of consociational mechanisms were included on the local and regional level in order to strengthen the protection of the minorities' rights, but without the inclusion of such principles on the national level. It is indicative, even though the causal relationship between the peace agreement and the further democratization in Croatia should be confirmed through a detailed comparative analyses we do not have the space for in this work, that among the countries involved in the inter-ethnic violence in Balkans, the Croatian record in both democratization and stability is far better than the one we register in the Bosnia and Macedonia, cases where the power-sharing approach including the entire spectrum of the inter-ethnic consocialism was adopted. Further on, in the works of Horowitz we also find other examples of the successful management of the inter-ethnic conflict through the institutional design that would produce the incentives to inter-ethnic conciliation (to mention only some of the cases in which the author analyzed the impact of the power-sharing mechanisms and inter-ethnic conciliation mechanisms: Nigeria before and after 1978, Indonesia, 1952, Papua New Guinea before and after dropping the AV electoral system, a

[664]For a criticism to Lijphart's consociational approach and inter-ethnic power sharing, see: Horowitz, 1991, who developed an alternative approach for the management of divided societies, and criticized the inter-ethnic power sharing on the grounds both of the empirical evidence and its capacity to contribute to the conflict settlement; Barry, 1975, who found tautology in Lijphart's pondering over consociationalism's capacity to bring to political stability, and challenged the cases Lijphart used as illustrations for the successful cases of power-sharing; Snyder, 2000, who pointed out the enormous risks for fueling the inter-ethnic violence that the application of consociationalism and inter-ethnic power sharing in the democratizing states can provoke; Goio, 2008, who explained how the inter-ethnic power-sharing influences the decision-maker's perspectives of power, creating incentives for the further ethnicization of politics; Schendelen, 1984, who criticized the selective use of evidence and who challenged the English reader's vision of the Netherlands as a case of consociational democracy; and finally Lustick, 1995, who criticized Lijphart's epistemology and methodology and criticized Lijphart's analysis of India.

quantitative cross-regions analysis of the link between the electoral results and the inter-ethnic relationships in India. See Horowitz, 2008). Finally, as underlined by Schneckener, 2002, by Hartzell and Hoddie, 2003, or by Snyder, 2000, there are plenty of different consociational arrangements and a large spectrum of different power-sharing that create different impact in the different settings, offering thus plenty of concrete policy solutions, some bringing to positive, other to negative outcome when implemented in the concrete national setting.

Turning back to the case of Macedonia, our analysis showed that none of the solutions the international actors pushed forward in trying to manage the inter-ethnic conflict in Macedonia included mechanisms encouraging the cross-ethnic political alliances, even though such solutions existed on the market-place of ideas. Even though the OFA underlined that no territorial solutions to inter-ethnic conflict should be applied in Macedonia and required that, when drawing the borders of the municipalities, the representatives of the municipalities would be consulted and the European Charter on Local Self-Government would be respected, the borderlines were drafted following only the ethnic key, neglecting even the minimum logical requirements for the municipalities' sustainability. Similarly, we saw how the implementation of the OFA in the field of the equal representation seriously hampered the professionalism of Macedonian civil servants, while the provisions concerning the use of language and education, rather than creating bridges between the divided communities, made the inter-ethnic division even deeper. If Macedonia had opted for a blind merit-based recruitment in administration, police, arm forces and judiciary[665], including, among other criteria, also the knowledge of the Albanian language[666], the percentage of the minority members in the administration would have increased without hampering the administration's professionalism. Should the provisions ensuring the multi-ethnic character of the political parties be included, an important link between the divided communities would be created. While Horowitz successfully argued that the choice of the electoral system can significantly influence the strategies of the political parties, creating the incentives for the creation of the multi-ethnic coalitions, the EU never made the recommendations concerning the choice of the electoral formula. Even though Schneckener (2002) underlined that parliamentarianism, limited veto rights, limited segmental autonomy (be it territorial or personal) and the flexibility of the proportional rules are far more functional mechanisms of power-sharing than the

[665]According to Snyder, 2000, such solution is explicitly considered a necessary condition for avoiding the further deepening of the inter-ethnic conflict and ethnically-blind rule implementation, see Snyder, 2000, p. 332.

[666]A similar solution based on the language knowledge and more flexible approach to the question of the ethnic representation in the civil service can be found in Belgium. See Schneckener, 2002.

respective alternative solutions (direct election of the president, large veto rights, large segmental autonomy and fix and rigid approach to the proportional ethnic representation), in Macedonia's case the international actors did not include those recommendations that would interfere with the relevant institutions and settings in a manner to ensure the better functioning of Macedonian consociationalism. While Roeder and Rotschild (2005) develop the "strategy of nation-state stewardship" as a solution to the inter-ethnic conflicts, underlining the important role of the civil society and strong civil liberties, mechanisms of checks and balances and division of power that would create alternative, crosscutting majorities, the EU promotion of the civil society is only sporadic (see chapter 11) and, as far as the constitutional design is concerned, its recommendations, when made, were actually strengthening the inter-ethnic segmentation (see chapter 5). Finally, in order to meet the urgent needs of the higher education in Albanian language, the international actors active in the country dedicated significant help to the creation and strengthening of the South European University, which is mainly addressed to the Albanian students (non-Albanian students amount to only 20%). However, such approach created a situation in which the two ethnically based scientific communities coexist without any communication between them. It is possible to hypothesize that an approach that, instead of strengthening the ethnic segmentation and isolation, would create incentives for crossing the ethnic division in the academic community and, more generally, in the civil society, could have contributed to the reduction of the inter-ethnic tensions.

Obviously, it is impossible to assess the impact of these alternative solutions we proposed above. The more civic-based approach would surely be more costly for the EU than the acceptance of the (bad) solutions over which the leading elite of the two ethnic groups agreed. It would require a stronger pressure on the domestic actors and a more active role of the solution-promotion rather than the one of the "mediator" played by the EU. Obviously, seen the lack of EU's experience with the democracy promotion in ethnically divided societies (the sharp inter-ethnic conflict and inter-ethnic violence made the Balkan transition one of the most difficult transitions of the former communist block, and surely completely different from the EU's experience with the Central Eastern Europe), the important impact that Lijphart's idea has on the policy makers, the positive experience with consociationalism among the EU member states, the urgency to bring the ongoing inter-ethnic violence to an

end and, most importantly, seen the preferences and requirements of the domestic ethnic elite[667], such choice of the EU is fully understandable. What is regrettable is that during the implementation of the OFA, in front of the domestic ethnicization of the issues, the EU allowed the domestic elite to further institutionalize the ethnicity, instead of insisting on the more civic elements present in the original OFA document. Such approach would surely be more difficult to promote, seen the large level of misfit between the civic-based solutions and the domestic elite's preferences and established status quo. However, seen the very high EU leverage on Macedonia and its political elite that was registered in this work, we might hypothesize that the international pressures combined with the incentives to the political leadership, could have pushed for more civic-based interpretations of the OFA, not allowing the developing of incentives for the further politicization of the ethnicity, that were recognized in this work as the biggest threat to both Macedonian peace and democracy.

As far as Serbia is concerned, the impact of the "EU anchoring package" content on the entire process was very strong. In particular, the choice of the EU to concentrate its attention on promoting Yugoslavia's and Serbia's cooperation with the ICTY significantly interfered with the democratization process, as it increased the costs that the elite of the ancient regime derived from both democratization and Serbia's pro-Western foreign policy[668]. Such requirement undermined the possibilities for Serbia to follow the negotiated path in its transition towards democracy, and induced a part of the political elite to break the basis of the agreement on the peaceful regime change negotiated the day before the "revolution of the 5th October". The requirement to face the past prematurely brought the question of lustration onto the agenda, bringing to the division within the DOS and the strengthening of the nationalistic, anti-EU political parties[669], which in turn brought to the developments we described when assessing the democratization in the two countries[670]. This criticism to the EU approach does not mean to argue that the EU should have neglected the war crimes committed during the '90s. It means to argue that the timing was particularly inadequate. In line with Snyder's affirmation that "justice does not lead, it follows", and observing the

[667] As Roeder and Rotschild underlined, while the power-sharing settings, in the short-run, are easier to be agreed upon and to bring to the ceasing of violence, their implementation in the long-run and the consolidation of the peace and democracy build upon such mechanisms is particularly difficult, bringing to what the two authors labeled the "power-sharing dilemma" which consists in "ending the war, but losing the peace". See Roeder and Rotchild, 2005, p. 6.

[668] See the section on other political requirements. See also Snyder and Vinjamuri, 2003, Snyder, 2005.

[669] See the section on other political requirements.

[670] See the comparative assessment of the mechanisms hampering the democracy in two countries at the beginning of the Conclusions.

example of Croatia and its cooperation with the ICTY, we argue that the EU choice to push the cooperation with the ICTY before ensuring the establishment of the democratic institutions in Serbia had a particular impact on the entire process of democratization. The conflict within the new ruling coalition emerged before the reforms had even started, causing the democratization process we previously described to stagnate. The effects of the EU decision to pursue justice before democratization in Serbia rather confirms Snyder's prognosis:

> "In those cases where the country's political institutions are weak, forces of reform have not won a decisive victory and potential spoilers are strong, attempts to put perpetrators of atrocities on trial are likely to increase the risk of violent conflict and further abuses, and therefore hinder the institutionalization of the rule of law… Attempting to implement universal standards of criminal justice in the absence of these political and institutional preconditions risks to weaken the norms of justice by revealing their ineffectiveness and hindering necessary political bargaining" (Snyder, 2005 p. 11).

As we argued in the section dedicated to "other issues", the content of the EU's "integration package" had a particular importance in Serbia's case. The distribution of the costs and benefits from the democratization process and from Serbia's integration in the EU overlapped, thus making the anchoring process a zero-sum game. Instead of the compensation of the costs that we saw in Macedonia's case, in Serbia we registered a situation in which, to the costs deriving from the regime change, the costs deriving from the new course of foreign policy were added, creating absolute losers and absolute winners. It was no surprise then that a strong anti-EU political force emerged.

Here again, as it was the case in Macedonia, the main question to answer is whether there was any available alternative and what the exit might have been if another course of policy had been chosen by the EU. The problem of the Serbian cooperation with the ICTY tackled a series of issues. First of all, the EU's commitment and recognition of the court established through the UNSC decision, the USA insistence on the Serbian cooperation with the ICTY, the obligation in front of the public opinion to punish those who were responsible for the war crimes and genocide perpetrated during the war in the Balkans[671], all these were important pressures that influenced the EU's choice to insist on this issue. Further on, the cooperation with the ICTY was also perceived as highly important for both the democratization of Serbia and for the stabilization and peace in the region: removing the important exponents of the

[671]Here the position of the Netherlands is particularly important. As the Netherlands military forces under the UNPROFOR were entitled to protect the safe area of Srebrenica, the country was accused of lack of intervention to prevent the massacre. In order to defend its own credibility and as a kind of ransom for their own responsibility, the Netherlands was and still is strongly supporting the ICTY.

ancient regime would further strengthen the new democratic elite, and at the same time would neutralize potentially dangerous heads of the military and paramilitary units. The last piece of the puzzle to explain the EU's choice to insist on the cooperation with the ICTY is to be found in the underestimation of the strength of the ancient regime and in the underestimation of the impact that such requirements would produce on the domestic actors. Yet, while these arguments justify the EU's choice to concentrate on the cooperation with the ICTY, this still does not mean that there were no available alternatives. As Snyder and Vinjamuri showed, there are several different manners of dealing with the war crimes (trials in front of international courts like ICTY, trials in front of domestic courts, truth commissions, amnesty), and the choice among them should be based upon a particular domestic environment (and distribution of power between the new and old elites) and the impact that particular instrument produces on the democratization process (see Snyder and Vinjamuri, 2004). The different alternatives are based upon different logics of behaviour and the choice of one rather than other represents the trade off between the logic of appropriateness and the logic of consequences, between legalism and politics, between justice and pragmatism. The above-listed series of reasons brought the EU to opt for the logic of appropriateness, including an issue that, from the consequential, pragmatic, more political point of view was doomed to deadlock the democratization process in Serbia among the norms it promoted.

As we saw, the content of the norms promoted by the EU therefore had an important impact not only on the developments in the single dimensions, but, more important, on the entire process of democratization and integration of Serbia and Macedonia. The choices of the EU were strongly influenced by its security concerns (see the previous section on the EU's interests) and by the particular domestic settings in the two countries, which represented enormous challenges to the democratization process. As we saw, the impact of the EU choice not only hampered the success of the EU democracy promotion strategies, but it also introduced elements of internal instability that, on the long run, threatened the security as well.

Beside the costs that come from the adaptation pressure of the promoted norms, timing is also an important dimension of the IA's approach that can significantly influence the exit of the entire process. The promotion of the particular norm represents an external influence on the domestic decision-making agenda. It is erroneous to see the promotion of a particular norm as an isolated event. A recommendation coming from an influential external actor is

strongly influenced not only by the existing domestic status quo, but by the particularities of the moment, by other issues on the agenda, by the distribution of the power and the domestic actors' perspective of power. As the garbage-can model of decision-making teaches us, each decision is the product of the particular moment in which it was taken. The timing in which the IA chooses to push forward the issues on the domestic agenda is an important aspect of the IA's approach that might be crucial for understanding the exit of the IA's promotion activity.

20.2.4. The IA's Approach: Channels of Influence

Another component of the IA's approach is the channel of influence through which the IA is promoting the norm. In the theoretical part of this work we identified four channels of influence: conditionality, influence on the domestic distribution of power, social influence and persuasion (social learning). The goal of this study, which included the analysis of numerous dimensions in the two countries, does not allow to focus on the micro-processes of socialization of individuals or small groups, nor the assessment of the influence these agents have on the decision-making process, approach that best suits the constructivist ontology (see Johnston, 2001, pp.506-507). For this reason, while the research offers the possibility to properly assess the impact of the conditionality and influence on the domestic distribution of power, we were not able to collect the necessary data for a proper, exhaustive analysis of the socialization strategies. However, a research design that concentrated on the process-tracing allowed us to identify those cases where the impact of the social influence strategies directly brought to the changes, offering us the possibility to analyze at least the most relevant cases of influence through the socialization strategies, drawing conclusions from them about the conditions under which those strategies are functioning and considering the impact they produce. Further on, by concentrating on the prevailing ideologies of the ruling political elite and on the diffusion of the values in the society, we will also be able to make general reflections concerning the vulnerability of the state elite to the EU's social influence. As far as the influence on the domestic distribution of power is concerned, as we underlined in the theoretical chapter of this work, the particularity of this strategy is that, rather than promoting a specific norm, it concentrates on bringing the actors who share the IA's agenda to the power. Due to its particularities, this strategy it is rarely used (until now, it was used only in the cases of Maciar's Slovakia, and, as we will see, in Serbia) and also rarely studied, so that the

research that included the country in which the strategy was put in place is offering a precious opportunity to assess the impact of this channel of influence.

As we can see from Tables 3 and 4, conditionality was applied extensively in both countries, with an important cross-country difference when it comes to the strength of the conditionality and the rewards offered in exchange for compliance. We can notice how in Macedonia not only were official requirements on the level of the European (Accession) partnership for rule adoption/implementation made, but also financial assistance was more often conditioned by the rule adoption, and, more importantly, in a great number of cases the compliance was conditioned by more immediate and greater awards (such as the donors' conference in 2002, the EU candidate status in 2005 and since then the promise to open the negotiations)[672]. In 11 out of 15 cases of rule promotion included in Tables 3 and 4 different means of conditionality were used, and 7 dimensions of policy linked to the democratization were included among the key short-term priorities. In Serbia, the conditionality applied was far weaker: a) the access to the CARDS funds was usually not linked to the rule compliance with the EU recommendations; b) only 4 dimensions concerning the democratization found their place among the key short-term priorities; c) only in case of requirement to cooperate with the ICTY a strong, decisive conditionality with important rewards (donors' conference in 2001, SAA negotiations in 2006-2007, signature and implementation of the SAA 2007-2008) was applied.

[672] On the importance of the size of the award offered, see Morlino and Magen, 2004; Morlino and Magen, 2008, Schimmelfennig and Sedelmeir, 2004.

Table 3: "The use of conditionality, rule adoption and compliance in Macedonia"

		Rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, accession to the funds	The issue was a part of the EU ***key*** short term priorities	The issue was a part of the EU short term priorities or among the priorities needing attention in the SAA reports	CARDS financial support to the process conditioned by the adoption of the laws	Rule Adoption	Compliance
Judiciary	Judicial reform 2004 - 2008	Yes	Yes	Yes	Yes	Yes	Partial
Constitutional issues	Constitutional reform (OFA 2001)	Yes	No	Yes	Yes	Yes	Good
	Constitutional reform (part on judiciary 2005)	Yes	Yes	Yes	Not directly	Yes	Partial
Decentralization	Decentralization: Amendments 2001, The Law on Local Self-government (2002)	Yes	No	Yes	Yes	Yes	Good
	The Law on Municipal Boundaries (2004)	Yes	No	Yes	Yes	Yes	Good
Civil Service	Civil service reform	Yes	Yes	Yes	Yes	Yes	Partial
Civil Society	2001-2008	No	No	Yes	No	Yes	Difficult
Police reform	Issues concerning the equal representation and decentralization of police service	Yes	yes	yes	Yes	Yes	Good
	Issues concerning the human rights protection and accountability	Partially	yes	yes	Yes	Partially	Difficult
Minority rights	2001-2008	Yes	No	Yes	Yes	Yes	Good
Elections and right to vote	2002	No	-	Yes	No	Yes	No
	2006	Yes	Yes	Yes	No	Yes	No
Ombudsman	Strengthening of the ombudsman (2003-)	No	no	yes	No	Yes	Partial
Media freedom	2001-2008	No	No	Yes	No	Yes	Difficult
Fight against corruption	2001-2008	x	Yes	Yes	Yes	Yes	No

Table 4: "The use of conditionality, rule adoption and compliance in Serbia".

		Rule adoption explicitly made a necessary condition for the signature of an important international treaty, integration process, accession to the funds	The issue was a part of the EU ***key*** short term priorities	The issue was a part of the EU short term priorities or among the priorities needing attention in the SAA reports	CARDS financial support to the process conditioned by the adoption of the laws	Rule Adoption	Compliance
Judiciary	Judicial reform 1 (2001)	-	-	Yes	No	Yes	No
	Judicial reform 2 (2002-2003)	No	-	Yes	No	No	-
	Judicial reform 3 (2006 -)	No	Yes	Yes	No	No	-
Constitutional issues	2000-2006	No	X	Yes	No	No	-
	Constitution 2006	No	X	Yes	No	Partial	Partial
Decentralization	Local Self-government, 2002	Yes (CoE)	No	Yes	No	Yes	Partial
	local self-government 2007	No	Indirectly	No	No	Partial	Partial
	Regions 2002	Yes (CoE)	No	Yes	No	Yes	Partial
	Regions 2006	No	No	-	No	-	-
Civil Service Reform	Failure to reform (2001-2003)	No	X	Yes	Yes	No	-
	The reform (2004 -)	X	Yes	Yes	Yes	Partial	Partial
Fight against corruption	2001-2002	No	-	-	No	Partial	Partial
	2004-	No	Yes	Yes	Yes	Partial	Partial
Civil Society		No	No	Yes	Yes	No	-
Military	The lack of reform 2000-2003	No	No	Yes	No	No	-
	The reform 2006 -	No	Yes	Yes	No	Yes	Ongoing
Police reform	2001-2003	No	No	Yes	No	Partial	Partial
	2004-	No	No	Yes	Yes	Partial	Partial
Minority rights		Yes (CoE)	No	Yes	No	Yes	Difficult
Elections and right to vote	2002, 2004	No	No	Yes	No	Partial	Partial
	2007 "electoral reform"	No	No	Yes	No	Partial	Partial
Ombudsman (2005-)		No	No	Yes	No	Partial	Partial
Media Freedom	Serbia 2000-2003	No	No	-	Yes	Partial	-
	Serbia 2004-2007	No	No	Yes	Yes	Partial	Partial
Cooperation with ICTY		Yes	Yes	Yes	Yes	Yes	Compliance with difficulties

Two are the factors explaining such difference in the level of the conditionality used: first of all, the two countries differ in their relationship with the EU. Macedonia signed the SAA already in 2001 (mainly as part of the EU's effort to bring peace to Macedonia by offering a strong political incentive for ceasing the hostilities), and a series of reforms were put in place since 2004 with the intention to apply for the candidate status. Serbia, on the other hand, still appears far from the application for candidate status (it only recently signed the SAA whose implementation is postponed by EU until the arrest of the last two ICTY indictees). This practically confirms the thesis advanced by the scholars studying the EU democracy promotion, according to which the nearer and bigger the award, and the more advanced the process of integrations of the country, the more credible and successful is the conditionality[673].

However, the level of the country's integration with EU only partially explains the difference in the strength of the conditionality applied to the two countries, as it concerns only one component of the conditionality strategy: the reward offered. It does not, however, explain the content of the norms that are linked to the reward offered. If we observe the conditionality that was linked to the donors' conferences in Macedonia and Serbia, we can notice how, while in Serbia the only requirement was Milošević's transfer to the Hague, in Macedonia the donors' conference was used to promote a series of norms: the constitutional reform, the Law on Local Self-Government, the Law on Amnesty and parts of the police reform. Similarly, while the advancement in the relationships with EU in Serbia's case was (and still is) conditioned by the cooperation with the ICTY (and, as we will see, with the particular distribution of power between political leaders), the advancement in the integration process in Macedonia's case was conditioned with several reform (police reform, judiciary reform, issues concerning the elections). The choice of the issues that will represent the condition for assigning the reward reflects rather well the IA's interests and the way the IA's interest is reflected in concrete requirements. We can therefore notice that almost all issues (the judiciary reform in Macedonia being the only exception) in which the EU decided to use the strong conditionality (conditioning both the integration and the financial assistance) were those issues that were perceived as keys for the EU's security concerns in two countries (ICTY and distribution of power in Serbia, decentralization, police reform, constitutional reform, Law on Amnesty, ceasing of the violence on the pooling day in Macedonia). This link between the IA's interest, the practical interpretation of these interests in specific dimensions

[673] See Morlino and Magen, 2004; Morlino and Magen, 2008, Schimmelfennig and Sedelmeir, 2004, Schimmelfennig and Sedelmeir, 2005, Kelley 2004.

of policy and the use of the conditionality are of particular importance for the revised EUCLIDA theoretic framework as they justify our decision to enlarge the framework on the supply side and include the IA's interests as an independent exogenous variable.

If we turn to the implementation of the norms promoted through the conditionality channel (see Tables 3 and 4), we can see that while the strength of the conditionality generally appears to be positively linked with the rule adoption[674], it appears to be a *sufficient* condition for the rule adoption only in those cases where an important reward (such as the signature of an important treaty, access to a huge amount of financial assistance or advancement in the integration process) is at stake. Such finding is largely in line with the findings of other researches that assessed the impact of the conditionality (see Morlino and Magen, 2008, also Schimmelfennig and Sedelmeier 2005). In all such cases a positive response of the domestic governments followed, despite the large domestic costs the compliance caused (see the cases of the cooperation with ICTY in Serbia or the issues concerning the implementation of OFA in Macedonia). In other cases, where such important reward was not offered, the adoption of the rule promoted by the EU was influenced also by the factors on the domestic level (see below).

Finally, as it emerges from the columns dedicated to the implementation of the rule, the impact of the conditionality appears far less influential, offering further evidence to the findings of Morlino and Magen who also register the gap between the rule adoption and the rule implementation (see Morlino and Magen, 2008). The important reward could ensure the proper implementation of the norms only in those areas concerning the implementation of the peace agreement in Macedonia, the same issues the EU had the most interest in, and where, as we will see, the domestic factors also had a positive influence. In other cases the partial or fake compliance were registered. This is quite in line with our hypothesis about the type of compliance achieved through the usage of the conditionality: the implementation of the adopted norm due to the change in the costs and benefits calculations will depend on the further structure of the costs and benefits for the stakeholders. Once the rule is adopted and the reward achieved, the original stakeholders' preferences might bring to the obstruction of the implementation making the final outcome strongly depending on the structure of opportunities in the phases of the rule implementation.

[674] Among the 41 issues presented in Tables 3 and 4, the high level of conditionality (positive assessment in at least three out of four indicators included in the table) was used in 14 cases, and brought to the adoption of the rule as recommended by the EU in 11 cases (or 78%), most of which in Macedonia.

As far as the social influence is concerned, for the reasons we underlined in the introduction to this section, we registered only few cases in which this strategy appeared relevant. One of the most interesting is surely the corruption issue in Macedonia, where the report of the International Crisis Group exercised not only an extremely strong pressure on the Macedonian ruling elite (resulting in the immediate adoption of a series of measures for fighting back the corruption), but, by accusing the international organizations (EU included) for financing the corruption in Macedonia, it exercised social influence over the IA as well, resulting in the immediate inclusion of the "fight against corruption" among the norms promoted in Macedonia. The social influence of the ICG report on the content of the norms EU was promoting in Macedonia is evident if we compare the 2002 and 2003 Commission report on Macedonia. While corruption was recognized as a serious problem in Macedonia already in the 2002 report, it was not mentioned among the Commission's recommendations to Macedonia until 2003. Usually, in the studies assessing the impact of the social influence, scholars are underlining that "when social influence is at work, (…) compliance should take place in the absence of material side-payments or threats of sanctions" (Johnstone, 2001, p. 506). However, in the case of the fight against corruption in Macedonia, we can claim that the social influence was crucial and more important than the conditionality, both for the compliance of the Macedonian authorities, and for inducing the security-concerned IA to include the issue among its priorities.

Other cases in which the social influence was applied in Macedonia concerned the reform of the judiciary, the accountability of the police forces and the electoral reform. In the case of the judiciary reform, strong criticisms against the Macedonian judiciary came from the World Bank, IMF and EU identifying in the lack of rule of law the main obstacle to the Macedonian economic development and thus drawing the attention of the domestic public onto the issue. However, seen that strong conditionality was exercised in promoting the reform of the judiciary in Macedonia, it is difficult to assess the impact of social influence in this case. The same is true for the police service reform where the CoE's report on the violation of the human rights led to domestic criticisms, but as the adoption of the Law on Police was a part of the conditions for the candidate status, we can not consider social influence decisive for the reform. Finally, in the case of the electoral reforms, the social influence was also relevant. Both electoral reforms (2002 and 2006) were triggered by the OSCE reports on the electoral irregularities that caused the delegitimization of the domestic status quo and loud criticisms

from the domestic civil society and experts. However, seen that in 2006 the social influence was combined with strong conditionality, the social influence, while present and surely relevant in both cases, can be considered important only in the case of the 2002 electoral reform.

Rather in line with the prediction concerning the type of compliance a particular strategy produces, here again we register fake compliance as the final outcome of the reforms. Yet, unlike the case with conditionality, the particularity of social influence as strategy to promote the reforms resides in the type of issue promoted: it usually concerns those issues in which the main line of the conflict divides the rulers from the ruled; the costs of the compliance with such norms usually tackles the political elite, while the citizens are the main beneficiaries of the compliance. For this reason, it is obvious that the government is usually prone to answering to the criticisms that undermine its democratic legitimacy with the adoption of a legislation which is usually symbolic in its nature. The success of such strategies strongly depends on the strength of the domestic civil society and of the electorate to influence the decision makers[675]. Where, as we claimed it was the case in Serbia and Macedonia, the ruling elite succeeds in avoiding the accountability, the impact of the strategies aiming to undermine the ruling elite's legitimacy is rather limited.

As we saw from this short description of those cases in which social influence was registered, in most cases it was an international actor other than the EU to issue the critical report that caused the delegitimization of the domestic status quo. Even though such finding is strongly biased by our level of analysis which is inadequate, as we argued, for revealing the impact of the socialization strategies, some general observations can be made. The most visible moment in which the EU exercises such influence is when the Commission issues its reports on the developments in the candidate and potential candidate status. As the report covers all dimensions included in the study, rather than an impact on specific dimensions of policy, the EU Commission reports represent a kind of overall evaluation of the government's performance. Concentrating on the reactions of the two countries' governments on the evaluation of the EU Commission, we can notice how the Macedonian political leadership appears to be much more vulnerable to the criticisms coming from Brussels. While in Serbia the EU commission reports are usually commented over the media but do not rise great

[675] Thus Checkel, 2001, examines the link between the patterns of the decision-making process and the success of the social influence as strategy, underlining that the social influence can be successfully used only where there is a strong civil society with significant influence over the decision makers.

discussions among the public, in Macedonia the last negative EU report triggered serious discussions on both public and political levels. The opposition seized the possibility to criticize the government, while the space the media dedicated to the deficiencies was rather consistent. This brings us to the assessment of the overall capacity of the EU to exercise social influence on the ruling elite in two countries.

As we underlined in the theoretical part of this work, the level of identification of the target state (citizens' and elite's) with the international environment and the level of misfit between the norm promoted and the internally diffused norms are two crucial factors opening the possibility for social influence. Seen the high level of domestic support the EU and NATO integrations enjoy in Macedonia, the Macedonian political elite is particularly vulnerable to any criticism coming from the EU and NATO. The domestic experts often report the enormously high levels of the external accountability of the Macedonian political elite, which practically results in a situation where the IA replaces the citizens in their function of keeping the government responsible. Such situation has two consequences: on the one hand, the influence of the external actors on the Macedonian political leadership is extremely high, on the other, the democratic capacity of the country appears rather low. As Hristova underlined, whenever some political actor fails to comply with the democratic norms, the first reaction is

> "to run to the EU representative or the USA ambassador, to lament the misbehaviour of the political opponent. They behave like children that do not have the capacity to solve their inner conflicts and have to run to the teacher seeking for protection. Instead of using the domestic institutions, instead of mobilizing the citizens, instead of calling for the attention of the public, they run to the foreign representatives. And this shows where the legitimacy to govern Macedonia comes from" (from the interview with Hristova, August 2008, Skopje).

Such behavior is further propelled by the domestic public which, in desire to see the country become part of the EU and NATO, is very sensitive to the assessments coming from the IA. The importance of the external legitimacy for the domestic political elite was also registered when, in the section dedicated to the right to vote, we underlined the USA ambassador's statements according to which the government elected due to electoral irregularities will not be considered legitimate by the USA, a statement that brought to what can be considered the only round of elections positively assessed since 2001.

As social influence can derive from *both* the desire to be part of a specific international organization and from the desire to show compliance with the internationally accepted norms, it appears relevant in Macedonia's case to underline that the main source of the elite's leverage to the IA's assessment comes from the desire to become part of the EU rather than to comply

with the democratic norms. This emerges as an evident conclusion from the studies by the domestic authors who claim that

> "in Macedonia there is an impression that our political consolidation is a process undertaken only due to the pressure from the international community. In practice, this means that we and our political elite do not need to improve the existing situation, we would be happy with lower standards as well, but, as they (the international community, *author's note*) insist, we are forced to…" (Hristova, 2005, p. 2).

In such asset, where the vulnerability of the domestic elite towards the influence of the external actors results in the substitution of the accountability from the citizens with the international factors, the democratization process is completely dependent from the international anchoring. In absence of external anchors, an extremely weak domestic society, whose democratic potential is also questionable, would not be able to make the ruling elite accountable for. The entire process of Macedonian democratization, as we will see, is therefore a product of the external influence and the international anchor appears to be the only source of survival of Macedonian (to-be) democracy.

The situation in Serbia is completely different. The presence of strong anti-EU forces diminishes the general importance this actor has for the legitimization of the domestic elite. Such influence should be rather assessed for the single actors, where the capacity of the EU to exercise social influence decreases as we pass from the pro-EU to the anti-EU actors. As we will see, a part of the EU strategy towards Serbia consisted in maintaining on power those actors whose ideological package and higher identification with the EU made them more open to external influence. However, while in Serbia there is no largely diffused identification with the EU, there is a widely accepted support for democracy as a form of government and the diffused belief that Serbia needs a series of reforms in order to become a well consolidated democracy. The democratic values and the conscience about the importance of change in many of the dimensions we analyzed in this work are accepted even by the right-wing nationalistic party, who, while strongly opposing the pro-Western course of the foreign policy, still underlines its devotion to democracy, respect for the rule of law, the necessity for an independent judiciary, free media, professional bureaucracy, de-politicized military and police, the strengthening of the local units of self-government (without regionalization)[676]. In practice, this means that the external social influence can be better exercised by relying on Serbia's identification with the democratic values, rather than on its identification with the EU. The partial reforms that, even in the absence of strong and credible external conditionality and of a

[676] Program SRS u deset tačaka, available at http://www.srpskaradikalnastranka.org.rs/index.php?a=44.

strong civil society, were introduced by the mid-nationalist government in the period 2004-2007, testifies the importance that the label "democratic" has for the Serbian political elite. The trend to include the external experts in the procedure of law-drafting even without complying with their recommendations, and the trend to seek for the legitimization of the introduced reforms by underlining the compliance with "the highest international democratic standards" testifies the existence and importance of the identification with the internationally accepted democratic norms and the importance that the social influence had for the Serbian decision makers. At the same time, the tendency to introduce the shortcomings in the adopted legislation and to obstruct the full implementation indicates that the level of the interiorization of these norms by the ruling elite is rather low, inducing us to assess these changes as a product of social influence rather than social learning[677]. Such lack of implementation also confirms the hypothesis according to which the compliance with the norm adopted in the search for legitimacy can be ensured only when there are mechanisms capable to unmask the fake compliance and to threaten the elite's legitimacy in case of non-implementation. Where, like in Serbia, the media freedom is threatened, the civil society is weak and the electoral accountability is hampered by the peripheral turnover, the fake-reforms are the mix produced by the government's necessity to keep its "pro-democratic" label and a structure which allows that the full compliance with the democratic norms is avoided.

This lack of influence on part of the Serbian political forces and the lack of general identification with the EU induced the international actor to include, among the strategy used in Serbia, the influence on the domestic distribution of power. Such choice was strongly influenced by the EU's security concerns, that identified in the SRS and Serbian nationalism a main security threat, particularly in the light of the at time still unsolved Kosovo's status problem. Further on, judging from the SRS electoral promises, their victory would also strengthen the Russian influence over the Balkans, it would make it difficult for the western companies to enter the Serbian market, possibly also threatening the foreign investments in the country, as the party was promising the "revision" of the privatization arrangements and was opposing the right of the non-citizens to own property. This way, the possible rise to power of SRS would represent a potential threat not only to the EU security, but also to its strategic and economic goals, inducing the EU to try to keep the Radicals from being in office.

[677] According to Johnston, 2001, the main difference between social influence and social learning resides in the level of interiorization of the norm: in the case of the social learning, the norm is internalized and the subject's values and preferences are changed due to successful persuasion. In the case of the social influence, such change does not take place.

Last, but not least, maintaining those known as "pro-EU and pro-democratic" parties on power, would on the one hand ensure the prevalence of the actor whose agenda is more compatible with the EU's, while on the other it would also ensure better domestic conditions for the successful usage of other strategies of rule promotion (as we saw, the social influence is functioning only on those actors who are highly identified with the actor exercising the influence, and only a pro-EU government would consider the EU integrations as a reward for compliance).

The usage of this strategy is best registered by analysing the statements that followed the Serbian electoral competitions: since 2002, the comments of the EU representatives on the forthcoming electoral competition in Serbia were filled with the "hopes" that Serbia would "opt for democracy and Europe". The results of the election, on their turn, were usually commented with expressions of satisfaction for the victory of the democratic blocks combined with expressions of concern for the rise of nationalists. The strong EU message given to the Serbian electorate, according to which "No EU future is possible with radicals" found its practical example in May 2007. During the 5-day-long Nikolić's mandate as the assembly's spokesman, the Belgrade stock market fell, the international agreements signatures were postponed and foreign investments suspended.

While in the period 2002-2007 the EU limited its influence on the electoral competitions in Serbia to stating its support to the pro-EU candidates and to schedule the Kosovo agenda in a manner to diminish the opportunity for nationalists to use the Kosovo issue for their electoral campaign, after May 2007 the EU started to openly support the pro-European political parties. In order to avoid the rise to power of the nationalists in May 2007, the EU pressed on Tadić to accept Koštunica's conditions for the creation of the "pro-EU government", offering in exchange the re-opening of the SAA negotiations with Serbia (see the section on the ICTY). As Koštunica moved towards the nationalistic block, in 2008 the EU openly influenced the electoral results in Serbia in an effort to increase Tadić's and small pro-EU parties' credibility and in a hope to ensure the victory of the candidates devoted to the EU agenda. Thus, during the campaign for the presidential elections in the first months of 2008, Serbia was offered a "special agreement" with the EU on January the 29th, to be signed on February the 7th, an offer coming from the EU Council of Ministers and criticized by the European Parliament as an effort to directly influence the exit of the second turn of

presidential elections, scheduled for February the 3rd.[678] The same criticisms were expressed on the decision to sign the SAA with Serbia on April the 29th, prior to the end of the campaign for the parliamentary elections scheduled for May the 11th[679]. The formation of the government in 2008 was also under strong EU influence, when, in order to avoid the coalition between SPS, SRS and DSS, the EU started pressing for the formation of what was seen by the Serbian public as an impossible, unnatural coalition between DS and SPS, parties that since the beginning of the '90s were in a relation of strong animosity. It is difficult to assess if there were any financial incentives offered to the SPS to induce them to take the EU path. Generally, due to the lack of transparency of the parties' financings in Serbia, it is difficult to bring the evidence of possible EU material supports to specific political parties, even though there is a high possibility that such link was established already in the '90s, when the opposition to the regime was financed by international donations (illegal, according to the law)[680]. However, in exchange for the SPS support, the party was offered the integration in the international flows from which it had been cut away, and a new perspective of the pro-European left-wing party: while SPS required the membership in the Socialist International in exchange for their entrance into coalition with DS, it was also offered the status of observer in the Party of the European Socialists[681]. All these examples testify that, since 2002, the EU sought to influence the distribution of power among the Serbian political actors, first in a softer manner by delegitimizing the nationalists and recommending the composition of "acceptable" ruling coalitions, and since 2007 even more openly, combining the delegitimization of SRS with clear, open support to the electoral campaign of the pro-EU parties and strong pressures for ensuring the formation of the pro-EU ruling coalitions. But what was the impact of such strategy?

In terms of the EU short term preferences, the strategy can be considered successful, as the immediate goal, to keep the SRS away from power, was realized. A closer look, however, reveals the serious problems such strategy rose. By identifying in SRS an enemy to fight, the EU actually froze SRS's anti-EU preferences. The EU's de-legitimization of the radicals

[678] See http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=01&dd=29&nav_id=282615, http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=01&dd=29&nav_category=11&nav_id=282615.

[679] See http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=04&dd=29&nav_id=296320&nav_category=11.

[680] See Southeast European legal development initiative report "Anti corruption in southeast Europe: first steps and policies", p. 91.

[681] See http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=05&dd=27&nav_id=300625 http://www.b92.net/info/vesti/index.php?yyyy=2008&mm=07&dd=01&nav_id=306393.

contributed to strengthen the party's identity and was the best proof of the radicals' commitment to anti-Europeism that the party could offer to its own electorate[682].

While the effects of such EU strategy on the SRS electoral results are mixed (the discussion would require a specific study on the subject), it had a decisive influence on the SRS's (im)possibility to gain the power. It decreased the radicals' coalition potential, and it kept their candidate away from the Presidential office. But at the same time, the usage of this strategy strengthened the effects of the polarized pluralism type of political system, contributing to further limitation of the political competition and electoral accountability[683]. As the biggest political party was cut away from the access to power, the pro-democratic forces (and in particular the central actor of the party system) were withdrawn from the electoral accountability, which influenced their devotion to the democratization reforms[684]. Further on, as the EU support was offered only to *part* of the political spectrum, unlike in Macedonia where the parties are competing for the EU's support and recognition which then make them accountable for by the external actor, in Serbia the EU is a resource of power available only to some actors. This diminished the EU's influence on the pro-EU parties by undermining the possibility for the EU to make these parties accountable for by threatening to withdraw its support[685]. The tolerance for Koštunica's nationalism and fake compliance or the acceptance of the SPS as the pro-EU party are the illustrations of such weakness.

[682] The effect of the EU delegitimization of the SRS on the party's electoral results represents a potentially fertile ground for testing Rabinowitz's model of the spatial competition. The hypothesis could be made that, far from discouraging its voters, the EU approach to the SRS increased the credibility of the party's anti-western rhetorics.

[683] As Vachudova stresses, "the EU and other Western policymakers need to understand that all previous cases of successful transition in post communist Europe are associated with the regular alternation of political parties in power, as well as the eventual transformation of most illiberal parties into parties that govern their countries on the road to EU accession. This has several implications for the Western Balkan states. First, the alternation of parties in power should be welcomed – most crucially, after the 2006 elections in Bosnia-Herzegovina. Second, parties that are considered extremist, such as the Radical party in Serbia, are unlikely to disappear. The best hope is to open more channels of communication and create incentives for them to embark on the process of "adapting" to an EU-compatible agenda." (Vachudova, 2006, p. 14).

[684]This is particularly true for the Koštunica and his DSS. A comparison of the laws drafted by the DSS (both those that were adopted and those that were only proposed) in the period prior to the consolidation of the polarized pluralism type of political system and those drafted and adopted after the DSS became a central party of the polarized party system with centrifugal competition and peripheral turnover shows a clear change of the preferences concerning the mechanisms of inter-institutional accountability. See the relevant empirical chapters, and, in particular, the chapter on the judiciary that brings some concrete examples.

[685] The importance of this finding is best seen if we compare the impact of the EU with the impact of the actors that, by offering their support to all political parties, create a situation where the parties are forced to compete for their support. In this work such comparison was made in the chapter dedicated to the economic issues, where the EU and the domestic business elite's impact on the political stakeholders were compared, and a comparative analysis of the situation in Macedonia and Serbia was undertaken. For a more detailed explanation and argumentation of this point, please see the paragraph "comparative assessment" in the chapter 17.

It is interesting to notice how the factors on the IA and domestic level have influenced each other: the IA's interests (security) resulted in the definition of the content of the norms to be promoted (concentrating on the ICTY, Kosovo, relations with Montenegro), which brought to the internal conflict within the domestic ruling elite that saw a re-emergence of the pro-nationalistic parties. The re-emergence of nationalism brought to further EU's security concerns which now resulted in the adoption of the new strategy to apply towards the country. Finally, the choice of the strategy sealed the SRS on its position of the "anti-system" party, and contributed to the further radicalization of their political agenda, turning them into the irresponsible opposition, further nourishing the polarized pluralism type of political system whose dynamics we identified as the main obstacle in the Serbian democratization process.

20.3. Domestic Level

20.3.1. Change Agents and Veto Players

One of the most important factors on the domestic level is the distribution of preferences among the relevant domestic actors. In Macedonia and Serbia's cases, due to the relatively weak civil societies and their low impact on the decision-making process (see the section on the civil society), the political elite represents the core actor in both deciding the course of democratization process and the course of the foreign policy and EU integrations.

As we have already underlined in the previous sections of this conclusive chapter, the political elite's preference in the field of the foreign policy in the two analyzed countries substantially differed. While in Macedonia all relevant actors (on both elite and citizens level) are supporting the EU integrations, in Serbia there is a strong presence of the anti-EU forces and the course of the foreign policy represents the most salient and most polarized dimension of the intra-party conflict. This practically means that, beside the change agents pushing for the Serbian integration with EU, there are also relatively strong actors trying to obstruct the process of the boundary removal. As we saw in the section on the international actor's strategies, this difference significantly shaped the capacity of the EU to influence the domestic politics by using the incentive of further integrations in order to influence the costs and benefits calculations of the domestic actors.

As far as the democratization process is concerned, the assessment of the actor's preferences is more complicated, as there are both cross-country and cross-issue differences with, in Serbia's case, differences between periods of time as well. While in Serbia the ten years of Milošević's semi-authoritarian regime resulted in the strong delegitimization of the status quo and the rise to power of the new elite with a reformist agenda, which brought to the positive cycle of reforms in 2001-2002 period, in Macedonia we generally do not register an overall delegitimization of the domestic status quo, neither the general division between the pro-reformist elite and the ancient-regime forces we found in Serbia. Further on, the turbulent domestic changes in Serbia saw the sequence of what we identified as three distinct cycles of the process, with the different distribution of power between the political actors and the different structure of their preferences.

In the first period immediately after the regime change (2001-2002), the positive domestic developments are associated with the delegitimized status quo and the presence of the reform-oriented political elite. All cases of positive compliance with the EU recommendations are registered in this first period, with the cross-issue differences coming from the level of the conflict over the issue and the presence or absence of the veto players: we can thus observe a partial compliance in those cases where the government had a strong interest in maintaining the status quo (like in the case of the decentralization) or even the lack of the rule implementation in the case of extremely conflictive issues like the law-package on the judiciary adopted in 2001 and never implemented. The legislation adopted in this period, the proposed law-drafts that did not make it in time to reach the decisional agenda, as well as the process of law drafting (generally inclusive, with the public discussion involving civil actors, domestic and foreign experts) all indicates the ruling elite's devotion to the democratization agenda.

The second period (2002-2003) was a period of political instability caused by the dissolution of DOS and reached its peak with the assassination of the Prime Minister Đinđić. It was the period in which the sharp political conflict within the new elite caused the blockage of the institutions, when in the name of democracy the democratic values were put aside and when the ruling elite was using the authoritarian mechanisms inherited from the ancient-regime in order to defeat the opponents.

From the analytical point of view, the most interesting is the period is 2004-2008, in which the ruling elite represented at the same time the most important change agent and the biggest obstacle to the reform. In line with Vachudova's label of "fake compliance", we can label such

actors "fake change agents". In substance, a fake change agent is an actor who apparently proposes the reformist agenda pushing for the adoption of laws that are usually perceived as part of the democratization process, but that in substance obstructs the full democratization either through the shortcomings and loopholes built in the legislation, or by obstructing the rule implementation. What are the factors that induce an agent to promote the reforms he does not have any intention to comply with?

Aside from the intervention of the international actors which, as we saw, can produce the incentive for the actors to accept changes they do not actually support, there is a series of factors on the domestic level that brought to such outcome. First of all, Koštunica's government was elected due to the reformist agenda proposed for the elections. Koštunica himself was perceived as the actor who does prefer the reforms, not so drastic and quick as those promoted by Đinđić, but who still shared his pro-democratic and pro-EU orientations. Elected upon the reformist agenda, in an asset where, generally, the delegitimization of the status quo still persisted in many dimensions (judiciary reform, reform of the civil society, fight against corruption and organized crime, military reform were all perceived by the domestic electorate as the areas most needing the reforms), Koštunica's government could not avoid the introduction of the promised reforms. We should not forget that during the whole '90s and in the first period after the change of Milošević's regime this actor was truly advocating for the democratization of the Serbian state, and his conflict with Đinđić was more a conflict on the *manner* in which the democratization process should be undertaken rather than a conflict over the need for changes. Yet, the political setting significantly influenced Koštunica's perspective of power, this way influencing this actor's short term preferences. As his party enjoyed the benefits of the polarized pluralism type of system, in an asset where the positioning on the center of the political spectrum made him a necessary partner in any government and subtracted him from the electoral accountability, the introduction of mechanisms that would limit the ruling elite's power and introduce mechanisms of intra-institutional accountability became the issue directly tackling the power he enjoyed and he believed he would enjoy in the years to come. The central actor of the political system and the most influential actor in the decision-making process became at the same time the main loser of the reforms he was supposed to undertake, turning him into what we labeled a "fake change agent". Koštunica's first government was a most active government in terms of the number of laws proposed: the civil service reform, judiciary reform, police reform,

constitutional reform, a series of laws in the field of the fight against corruption were all undertaken in a very short period of time. However, as the relevant sections of this work showed, in each of these fields the adopted rules contained a series of loopholes, all of which for the benefit of the same agents and ruling political parties, and all of which have the same deficiency, that is a failure to establish truly independent bodies necessary in order to ensure inter-institutional accountability. The distribution of the portfolios in the first Koštunica's government indicates that each of these bills was proposed by a minister controlled by DSS.

The structural characteristics of the party system also influenced DSS's preferences in the field of the foreign policy. As the main dimension of the Serbian party system concerned the direction of the foreign policy and EU integrations, Koštunica's power depended on the maintenance of the high polarization of the political system in the dimension of the EU integrations. The security-driven EU approach to Serbia and the effort to influence the domestic distribution of power that saw Koštunica as the main beneficiary of such strategy, have only further strengthened this actor's interest in maintaining a high level of conflictuality over the external policy. The mid-instability, the presence of the nationalistic rhetorics and the uncertainty on the direction of the foreign policy turned into the main factors that maintained DSS on power. This actually induced Koštunica to intensify the usage of the nationalistic rhetorics and to gradually shift closer and closer to the nationalists in order to increase his bargaining power. Finally, when the unilaterally declared independence of Kosovo brought to a shock in the domestic party system and a further polarization of the positions, Koštunica had no choice rather than to switch his preference about the EU integration and join the pro-nationalistic block.

In Macedonia's case, the preferences of the stakeholders appear to follow a cross-issue, rater than cross-time pattern. By analyzing the domestic factors, distribution of preferences, lines and levels of conflict, we can observe two prevalent patterns: the first can be identified in the issues concerning the Ohrid Framework Agreement and inter-ethnic distribution of power (decentralization, constitutional reform in 2001, minority rights and the equal representations). In all this fields we registered the presence of a strong domestic change agent pushing for the introduction of the changes (Albanian ethnic minority) and an extremely high level of conflictuality over the issues (inter-ethnic conflict), which resulted in negotiations between the narrow political leadership behind closed doors with the international actor's mediation. The outcome in these dimensions, as we saw, was the rule adoption and the relatively good and

efficient implementation of the laws adopted. It is interesting to note how, in those dimensions concerning the inter-ethnic distribution of power in Macedonia, the role of the veto players opposing the change is linked to the *position* rather than to the *identity* of the actor. We saw how, in the field of the decentralization and police reform, the political parties acting as change agents during their stay in office, once in opposition, turned into veto players obstructing the same changes they used to advocate. Especially in the fields salient to the international actors, the obstruction of the change, rather than a *goal*, as it was the case in Serbia, appears to be a *strategy* in the political struggle. Which ever the content of the externally promoted issue, the government always tends to play the role of the change agents, while the opposition by default assumes the role of the veto players, and the passage of the actors from the opposition to the government implies the change of their preferences. The preferences are thus fixed to the roles exercised by the actors, in case the government is determined by the international pressure and necessity to maintain peace and stability, while the preferences of the opposition is determined by the convenience in using nationalistic rhetorics for the mobilization of the electoral support. Such fusion between roles and preferences is a consequence of the switch in the lines of the accountability: the parties at the power, strongly dependent from the external actors, are subject to the external accountability, while the opposition's strategy consists in mobilizing the citizens' support and in obstructing the governments to score points for the further development of the EU integrations.

The other pattern identified in Macedonia concerns those issues that tackle the depoliticization of the state institutions, the introduction of the intra-institutional accountability, the strengthening of the democratic norms and values and the fight against corruption. In these fields Macedonia follows similar dynamics to those registered in Serbia's third cycle of democratization: an absence of strong change agents, which results in the adoption of laws that remain not implemented. In this group, the main difference with Serbia lies in the origin of the input for the rule adoption and in the modality of avoiding the change: while in Serbia the main input for introducing the reforms comes from the key actor's ideological baggage, electoral promises and the need to maintain an image of "reformist forces", in Macedonia such input principally comes from the international actor's democracy promotion requirements. Such difference is reflected on the *modus* in which the political elite is avoiding the introduction of the democratic reforms: in Macedonia the high level of external accountability combined with low administrative capacity results in the rather good normative

compliance with the externally promoted norms and the lack of implementation of the legislative framework that usually reflects the international standards. In Serbia, where the entire process is more domestically guided, where the EU leverage is weaker due to the presence of the anti-EU forces and the administrative capacity is rather high, the prevalent pattern consists in the introduction of loopholes in the legislation to make the obstruction of the implementation easier.

20.3.2. Presence of Alternatives

The presence of the alternative norms to the ones promoted by the external actor was identified in literature on norm promotion as one of the important factors influencing the exit of the international actor's norm-promoting efforts (Morlino and Magen 2004, Morlino and Magen 2008, Schimmelfennig and Sedelmeier, 2004). We should distinguish between the general alternative in the country's course of foreign policy and the alternatives to the democratic norms (to be identified as the alternative to the specific norms promoted by the EU).

The alternative to the foreign policy, in our case, actually means the alternative to the EU integrations. When, as in Serbia, the ruling elite, or part of it, think it has an alternative to the EU integrations, the EU's capacity to influence the government by offering EU integrations in exchange for the compliance with the norms promoted is diminished, due to the lower value the elite associates to the reward in question. The presence of the alternative in the country's foreign policy thus hampers the EU's possibility to influence the domestic process through the usage of the conditionality channel. The two countries included in this study significantly differ in this dimension: while in Macedonia the Euro-Atlantic integrations are overly accepted, in Serbia the conflict over the foreign policy sees the political elite and electorate divided into filo-europeists and filo-russians. While the important role of the USA in Macedonia usually strengthens, rather than weakening, the EU's efforts, as the two actors have a rather similar agenda[686], in Serbia's case, the strong history of partnership with Russia, and in particular the Russian support to the Serbian cause in questions linked to the Kosovo status, represented a serious threat for the EU influence on Serbia. The EU security concerns over the Serbia-Russia relations particularly grew in the last period of stronger confrontation

[686] As Butini's, Police Advisor at European Commission Delegation of Skopje and former Deputy Chief of EUPOL-Proxima, mission in Skopje underlined, there usually is an atmosphere of cooperation with the other international actors present on the field, where an effort is made to achieve a common approach to the issues. From the interview with Butini, August 2008, Skopje.

on the line EU-Russia about Kosovo and Caucasus and the growth of the Russian economic relevance, due to the economic strengthening of Russia[687] and Russian control over important energetic resources. The EU perceives Russia as a "country of great power ambitions[688]", ruled by Putin's "authoritarian capitalism[689]", with a hard-line approach in the foreign policy. This situation makes the pro-Russian orientation of part of the Serbian political elite an issue directly tackling the EU's strategic interests in its foreign policy, raising the EU's security concerns and strengthening its preferences for the particular distribution of power between the Serbian elite.

As far as the alternative to democratization is concerned, the spread of liberalism after the fall of the Berlin Wall resulted in posing serious difficulties for any legitimization of the power that does not recall the "will of the people", bringing to the disappearance of any other paradigm that could propose and legitimize a political system different than democracy. However, this still does not mean that the worldwide political elites decided to accept the democratization agenda, for while there is almost no political regime that the citizens of the single states would prefer to democracy, there are plenty of authoritarian or semi-authoritarian alternatives the ruling elite might find useful to replicate at home. The Russian authoritarian capitalism, or, as it prefers to be labeled, the "sovereign democracy", represents a model for the power-seeking political leadership who can easily justify the democracy limitations in the name of "greater national interests", as we saw in Serbia and, recently, Macedonia (see the section on the name issue in Macedonia).

Finally, in the single dimensions of policy, the presence of alternatives might not only refer to the existence of the external alternative resources of rewards or of external alternative resources of norm, but it can also come from the different preferences of the domestic actors. In Serbia's case many reforms were blocked exactly due to the incapacity of the ruling elite to agree which of several alternative solutions to adopt. Not necessarily the choice is between the democratic norm and the authoritarian practice, all the available alternatives often are equally democratic and equally efficient but with different distributive effects. The most illustrative case of such situation is the conflict over the nature of Serbian transition, where part of the actors supported the continuity-approach while other political leaders were advocating for the

[687] See Maynes, 2006.
[688] Olli Rehn, 2008, see http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/236&format=HTML&aged=0&language=EN&guiLanguage=en.
[689] Olli Rehn, 2008, see http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/08/222&format=HTML&aged=0&language=EN&guiLanguage=en.

discontinuity-based transition. The judiciary system reform, the reform of the civil service reform, the police and military reform, the constitutional reform, in all these fields the changes were blocked in the first period of Serbian transitions even though all relevant actors were hoping for the introduction of democratic changes, mainly due to the lack of consensus over the manner in which the specific reforms should be undertaken.

20.3.3. Fluidity-Stability of the Domestic Setting

The political environment in a particular period of time is another factor of the EUCLIDA theoretical frameworks. As Morlino and Magen underlined, it is possible to hypothesize that in the "uncertain, (fluid) political environment the state actors will be more open to seek for new solutions", which opens the possibility for substantial domestic change (Morlino and Magen, 2008, p. 23). The uncertainty of the political environment can be caused by different factors: the collapse of the previous ideological regime or the deep internal crisis or conflict are the most evident examples of shocks that might create the need for the reformist turns due to the elite or popular pressures. In both analyzed countries we register the events that brought to the uncertainty of the political environment, further resulting in a series of changes. In Serbia, such situation is linked to the end of Milošević's regime, that saw the rise of the new political elite and the overall delegitimization of the existing status quo, while in Macedonia the 2001 inter-ethnic violence was ceased by the signature of the Ohrid Framework Agreement that brought to the series of changes we described in the empirical part of this work.

Beside the impact of these important events, we should also take into account the *electoral uncertainty* that, in the works on the institutional choice, have been identified as an important factor influencing the features of the newly established institutions. In the periods of transition to democracy, the distribution of power and the degree of uncertainty of the stakeholders influence the decision maker's preferences over the institutional design. The higher levels of uncertainty over the future distribution of power and increased political competition would thus favour the introduction of mechanisms limiting the power of the winners, while the decision makers that expect to maintain their office after the elections would be less willing to accept any mechanism limiting their freedom of action[690].

[690] On the levels of electoral uncertainty and its impact on the choice of the form of government, see Frye, 1997, also Kasapović, 1997. For the impact of the electoral uncertainty on the judicial system, see Smithey and Ishiyama, 2000, Bumin, 2007, Moraski, 2007. On the link between the electoral uncertainty, electoral accountability and their impact on cooruption, see Ferraz and Finan, 2007. On the importance of the robust, programmatic political competition for the democratization of the Balkans, and, in particular, Serbia, see

The level of electoral uncertainty appeared to be one of the important factors influencing the process of democratization in Serbia. A comparative analysis of the different periods of time clearly shows how the decreased electoral uncertainty caused by the emergence of the polarized and consequential peripheral turnover significantly influenced the preferences of the central actor. We can thus distinguish between a period of high level of electoral uncertainty immediately after the fall of Milošević's regime, that corresponds to the most positive period of the Serbian transition where the relevant actors showed true commitment to the democratization process, and a period of extreme certainty for part of those political actors who emerged in the period 2003-2008. During this second period, the actors who enjoyed the benefits of the peripheral turnover and who were subtracted from the electoral accountability, clearly changed their preferences. We thus saw how, through fake compliance, these actors obstructed the introduction of mechanisms of inter-institutional accountability and opposed the establishment of rules that would limit the ruling elite's power. As we already underlined, the developments in Serbia confirm the hypothesis according to which the low level of the electoral uncertainty obstructs the introduction of mechanisms ensuring the intra-institutional accountability. However, while the cross-time comparison confirms the hypotheses concerning the relevance the system's competitiveness has for the democratization process (a hypotheses that was tested in different fields of reform, see the note 691), the cross-country comparison clearly shows that such factor can be seen only as a necessary, but not sufficient condition for the change. The higher level of electoral uncertainty in Macedonia was not capable to increase the government's accountability. Even though Macedonia tracks a far better record in the adoption of the rules that are limiting the power of the government and establishing the mechanisms of inter-institutional accountability (thus apparently confirming the hypothesis concerning the impact of the electoral uncertainty), the external pressure that brought to the rule adoption and the difficulties in the rule implementation are disqualifying the competitiveness and electoral uncertainty as a potentially sufficient condition for a responsible government. As our analysis showed, the limited system's competitiveness is only one of the many causes that can hamper the ruling elite's responsibility. The nationalism, the inter-ethnic tensions, as well as the weak state institutions and poverty we identified in Macedonia are also rather fertile grounds for corruption and deficiencies in the procedural dimensions of democracy and the rule of law[691].

Vachudova, 2006.

20.4. Anchoring and De-anchoring of Macedonian and Serbian Democracies

At this point, both the dependent variable and the settling of the EUCLIDA factors being described, we can concentrate on the overall process of anchoring Serbian and Macedonian democracy. In this section we will thus describe the development of the process of international anchoring in the two countries, paying attention to the manner in which the democratization and EU integrations processes were linked, influencing each other and bringing to the establishment of specific domestic regimes. There are few questions we will try to answer in this conclusive chapter of the work: did the EU influence the democratization processes in Serbia and Macedonia? How? Did the linking of the regime change process to the EU integration contribute to the outcome of the EU's democracy promotion activities in the two countries? Do our two studied cases offer evidence for the thesis according to which the consolidated regime bears the impact of the anchors and mechanisms that characterized the phases of the consolidation?

In both countries the presence and the activities of the EU appear to have a great impact on the domestic developments, but this impact, as we will see, differed in the outcome it produced.

In Macedonia's case, the entire process of democratization appears to be externally guided. The EU and, more generally, the western democracies, exercised an extremely high impact on the developments in Macedonia, resulting in the change in the lines of accountability we described above. The high EU influence on the domestic decision makers resulted in the establishment of the external accountability as the most important accountability mechanism in Macedonia. As the EU in Macedonia became a resource for power, available to all participants to the political game, and the EU recognition became necessary for the legitimization of any power-seeking actor, the political process in the country underwent an important change. Unlike the other democratic political regimes, in which a key political process sees the social groups offer their support to the leadership in exchange for decisions (or promise of decision) this elite will enforce, in Macedonia's case the IA turned out to be

[691]For nationalism as the obstacle to democratization and in particular as a mechanism hampering elite's accountability, see Snyder, 2000, Snyder and Mansfield, 2002, Charron 2007, La Porta et al 1999, Alesina et al 2003.

one of the participants to the political game, with its own resources to offer to the political elite seeking the power, and its own requirements linked to this support. This brought to the situation we described in the sections dedicated to the domestic actor's preferences, where the preferences are no longer linked to the actors, but to the position (function) a specific actor holds. The decisions (or at least some of the decisions) are no longer influenced by the electoral process: when voting, the citizens actually do not decide the course of their country's policy, but only appoint the individuals that, in exchange for the benefits deriving from the office, will put a rubber stamp on the externally required policies. The only link that allows us to consider democratic an asset characterized by such substitution of the responsibility from the citizens to the external actor is the existence of strong citizen's support for the country's EU and NATO membership. It is thus due to the promise of integration and to the citizens' will to fulfill the EU requirements in order to become a member state that the external impact on the domestic decision makers was legitimized in all fields of policy.

If we observe the factors that have most significantly influenced the outcome of the anchoring process in Macedonia, a key dimension is surely to be found in the IA's security concerns and the content of the norms promoted. The 2001 inter-ethnic violence induced EU to use the integration carrot for promoting peace and democracy in Macedonia. The strong accent posed on the inter-ethnic power-sharing mechanisms and consociational democracy the EU was promoting in Macedonia fitted rather well into the preexisting domestic pattern of the inter-ethnic division of the spheres of influence. It thus produced a further institutionalization of ethnicity and further strengthened the political leaders of the ethnic communities. At the same time, it also produced incentives for further use of the nationalistic rhetorics and the maximization of the Albanian ethnic group's interests, which increased the Macedonian elite's dependence on the IA as the only guarantee of peace and stability in the country. The will to become part of the EU, and in particular the economic and security benefits expected from the Macedonian Euro-Atlantic integrations, were extremely important incentives for the Macedonian ethnic community, who was the main loser of the compliance with the norms the EU was most seriously promoting. The anchoring process thus produced a positive feedback in which the external anchor actually strengthened the domestic anchors of the electoral democracy, resulting in the consolidation of the regime which fully reflects the particularities of the process that brought to its development: the Macedonian political system, with its characteristics and malfunctioning, bears the visible fingerprint of the interaction

between the EU's security interests and approach to crisis management and the domestic inter-ethnic relations.

The empirical analysis of this work showed that the reforms aiming to consolidate the Macedonian democracy were all externally guided. The strong external influence brought to fair compliance even in those issues of high-level policy with strong internal conflict, while the lack of full implementation of the democratic norms is to be blamed on the lack of domestic change agents combined with the lack of constant, credible IA's pressure for reforms. The EU's capacity of fostering the compliance with the democratic norms and the need for constant external pressures for ensuring proper implementation was most obvious in the case of the implementation of the electoral code: the strong external pressure was capable to ensure the fairness of the 2006 parliamentary elections, but as soon as the attention was lowered, the violence on the election day was registered again.

The importance that the external incentives and continuous external pressures have for ensuring the democratization of Macedonia induces us to question what impact will the future developments in the process of Macedonian integration produce on the domestic regime. As we saw in the section dedicated to other political issues, the name dispute with Greece blocked the Macedonian membership in NATO and, due to the EU Member state's veto power in the field of EU enlargement, also threatens the Macedonian EU integration. Such situation brings to question the EU's credibility when using the integration as a carrot for fostering Skopje towards further democratization. Further on, seen the lack of domestic consensus over the polity, where the only goal in common between the two divided ethnic groups is the country's foreign policy, the possible failure to proceed with the integration might undermine the only tie that keeps a divided society from disintegrating.

But on the other hand, seen the importance of the external anchor for the survival of the Macedonian democracy and the need for the continuous external incentives for ensuring the minimum level of compliance with the democratic rules, we can wonder on the impact that the EU integration will produce on Macedonia. As the Bulgarian example shows[692], once the country enters the EU, the EU's influence on the domestic political regime significantly decreases, and recent researches registered even a drop and reversal of the reformist course in those cases of reforms promoted through the external conditionality. In a certain sense, we can perceive the moment when the country finally acquires its membership into the EU as the moment in which the external anchor of the political regime is weakened, and the

[692] See Dallara 2008b.

maintenance of the established political regime turns into a mainly domestically driven process. In the absence of domestic mechanisms capable to ensure the minimum level of national unity and to support the democratic regime, the weakening of what appears to be the strongest anchor of the Macedonian political regime could, in line with Morlino's anchoring theory (1998, 2005), result in a serious crisis of the regime. From this point of view, the Macedonian citizens currently appear to draw greater benefits from their *desire* to join the EU than they would from the actual membership. Such situation actually dooms Macedonia to a long permanence on the EU's doorstep: in order to prepare Macedonia to bear the joy of the realization of its dream, the current setting should change, bringing both to the depoliticization of the ethnicity, the surpassing of the ethnic divisions and the building of a strong domestic support for democracy. Seen the EU's capacity to influence the domestic actors, a more democracy-concerned EU approach could be a first step in helping Macedonia to become a sustainable democratic state.

The anchoring process of Serbia followed a different path, as the content of the EU's boundary removal package undermined the relationships between the domestic actors, hampering the agreement between the new and the old elite upon which the negotiated transition in Serbia was based, while the economic dimension of the EU integrations threatened the interests of the business elite with monopolistic position and strong interests in protectionists policies[693]. The insistence on the cooperation with the ICTY not only exercised a catalyst effect pushing the differences within the new ruling elite to surface, but it also extremely increased the old elite's costs deriving from the switch in the country's foreign policy. The ancient regime forces found their shield in the nationalists, who used the citizens' disappointment to gain support for their political platform that was mainly concentrated against the selling of domestic property to foreign investors and against the EU and Western influence. The dissolution of DOS and the re-emergence of the nationalists brought to the polarized pluralism-type of party system organized around the foreign police and nationalism vs. civic values as the most salient, overlapping dimensions of domestic conflict.

The presence and strengthening of the anti-EU parties increased the EU's security concerns, which were then reflected over the EU's strategies, inducing the external actor to try to influence the domestic distribution of power by delegitimizing the nationalists and investing resources to ensure that the country maintains its pro-European course. The strategy appeared

[693]For the preferences of the economic elite and their position towards the EU integrations, see the chapter 17.

successful for keeping the nationalists away from power but, at the same time, exercised a strong influence on the domestic actors' preferences, and, in particular, it contributed to change the central actor's short-term strategies and perspective for power. In the field dedicated to the domestic actors we argued how Koštunica's preference in both democratization and boundary-removal process was molded by his position at the centre of the political system and the choice of the EU's strategies: a former pro-Europeanist, pro-democrat turned into a fake change agent and current loudest opponent of Serbian integration into the EU. A similar pattern was also registered when we turned to analyse the business elite, whose substantial interests were threatened by the EU boundary removal package (opening of the market being the most opposed issue), while the democratic norms promoted by the EU threatened their corruptive links with the Serbian political elite. Both economic and political implications of the boundary removal process actually threatened the domestic pattern of relationship between the key actors, resulting in a situation where the creation of the *external* anchor was actually dismantling the existing *domestic* anchors of democracy. The crisis of 2002-2003, which resulted in the complete stagnation of the democratization, even the reversal of some positive changes, and culminated in the assassination of the Prime Minister, was a consequence of such negative impact the external intervention produced on the basis upon which the fragile domestic regime resided. What followed was the establishment of a system which nourished itself from Serbia's biased relation with the EU, creating strong short-term interests for the stakeholders to maintain the EU's security concerns vivid, keep Serbia's uncertainty over the course of foreign policy high and undertake partial reforms in the field of democratization. Parallel with the process of anchoring the Serbian political regime and foreign policy into the "EU hub", the very choices in the content and strategies used by the EU were thus bearing the seeds of de-anchoring and of the crisis Serbian relationship with the EU experienced in the first half of 2008.

The product of such asset in terms of democratization is a democracy in which both components of the procedural dimension identified by Morlino (2004a, 2004b) (namely rule of law and accountability) are damaged. We already underlined how the lack of inter-institutional accountability is combined with seriously hampered electoral accountability. The consequential deficiency in the rule of law is therefore obvious, the lack of an independent judiciary, the politicized administration and corruption being the main shortcomings identified.

To what extent can Serbian democracy be considered anchored to the EU? The answer is difficult to give, seen the ambivalent role the EU had in the process of democratization. The EU was, at least until now, successful in keeping the ultra-nationalist parties away from power, and in the measure in which SRS is a threat to Serbian democracy, the role of the EU was decisive. It also supported the reforms with technical and financial assistance and it had an important advisory role in the drafting of many legislations. It exercised a significant social influence and, last but not least, with its insistence on the creation of a "pro-democratic government", it created a situation where a certain degree of compliance to the democratic rules and of reformist attitude were necessary in order to maintain several benefits that the EU was offering to the democratic regime in Serbia. But, at the same time, it also undermined the domestic anchors of democracy, contributing to the emergence and maintenance of the polarized pluralism type of party system and, by the choice of its strategies, contributed to the mechanisms that hampered the electoral accountability and turned the central political actor into what we labelled a "fake change agent". It tolerated the Serbian fake compliance, showing inconsistency in its approach to Serbia, and it concentrated far more on the Serbian cooperation with the ICTY, rather than on pushing the democratization reforms ahead.

The sequence of events that we described in this work and the development of the logical links between the different phases induce us to believe that the current features of Serbian political regime are strongly influenced by the dynamic of Serbia-EU interactions, where the factors on the supply side and those on the domestic level strongly influenced each other, producing the registered outcome. The Macedonian example also offered a confirmation of the thesis according to which the particularities of the anchoring process strongly influence the type of regime consolidated and based on such anchors.

20.5. Final Reflections

Before concluding, we'd like to ponder on the most important lessons that can be drawn from this study and underline possible future fields of research.

The first set of lessons to draw from this analysis concerns the importance of the content of the norms the IA is promoting as part of the democratization and boundary removal process. Aside from the particularities already underlined in literature (the level of misfit with

the domestic norms[694], or the importance of concrete, clear recommendations in order to facilitate the monitoring and increase the credibility of the conditionality[695]), which are crucial for understanding the response of the state in a particular field of influence, we'd like to underline the strong impact that the content of the promoted norms (both those concerning democratization and those concerning other dimensions) produces on the overall process of anchoring. As we saw in the cases of Serbia and Macedonia, the particular norms can interlock with the existing domestic patterns upon which the system is based, both by strengthening it (as it was the case in Macedonia and the IA-promoted *consociationalism* and inter-ethnic power-sharing mechanisms) or by undermining it (in Serbia's case we refer to the requirement to cooperate with the ICTY, which made the "reforma pactada" and negotiated transition, praised by Linz and Stepan (1996) as the safest course to democracy, an impossible path to follow). As such, the content of the promoted package, due to the redistributive effects of the promoted norms, can significantly influence the functioning of the domestic anchors of the political regime, fostering, or obstructing both the domestic and international anchoring of the democracy. Further on, it also has important implications on the type of the political regime established, as, in line with Morlino's anchoring theory, the consolidated regime bears the evident characteristics of the mechanisms that brought to its consolidation. In promoting democracy, the international actors should therefore pay particular attention to the impact the particular requirements have on the domestic asset: a more case-sensitive approach, which would base any particular requirements upon an accurate knowledge of the domestic situation, is needed in order to both avoid that a promoted rule brings to the strengthening of the domestic un-democratic practices, and to prevent that the existing domestic anchors of democracy are destroyed.

Another important lesson drawn from this study considers the channels of influence the IA uses. The effects produced by the influence on the domestic distribution of power in the case of Serbia (change of the DSS's preferences on both democratization and EU integration processes) are actually what is known in the literature on international relations as the systemic influence. As underlined by Waltz (1979) in his discussion on the concept of "system", the distribution of power represents a *structural* characteristic, and the influence over the distribution of power produces a *systemic* change that influences all actors of the system[696],

[694] See for example Schimmelfennig and Sedelmeir 2004, Borzel and Risse, 2000, Morlino and Magen, 2008.
[695] See Schimmelfennig and Sedelmeir, 2004, Morlino and Magen, 2008.
[696] For the definition of the system and structure see Waltz, 1979.

causing the adaptation of their strategies and preferences to the new setting. Even though it is most visible in the case of the strategy which aims to the re-distribution of power among the domestic political actors, such systemic influence can be produced by other strategies as well: in the case of social learning, the change of the values and preferences of the actor subject to external persuasion brings all other actors into the new asset they have to adapt to. Finally, in the case of the conditionality and social influence, the presence of the external actor who offers incentives, in exchange for particular policies, influences not only the actors that are the target of such strategies, but also those who oppose the adoption of the policy and all other relevant actors in the system whose perspectives of power, short-term preferences and strategies should adapt to the presence and intervention of the IA. The story of the Macedonian police reform thus offers an interesting example of how the opposition can seize the opportunity opened by the government's necessity to respond to the external conditionality in order to push its own issues on the agenda. Finally, in line with Bozzo and Simon-Belli (2000), we can observe how the IA becomes an unavoidable part of the domestic actor's strategies and preferences. Hadn't there been EU or USA to guarantee the peace in Macedonia, to mediate between the ethnic groups and to serve as an excuse in front of the electorate for striking the deal with the Macedonians, could the political leaders of the ethnic Albanians in Macedonia continue to maximize their requirements, risking to get to the point at which conflict is unavoidable? And, if there was no IA whose pressure could justify the adoption of particular norms, could the right-wing VMRO maintain its credibility and the image of "protector of the Macedonian nation", satisfying, at the same time, a series of Albanian requirements?

When initiating the rule-promotion in a particular target state, the international actors should pay particular attention not only to the impact the promoted norms will produce, but also to the impact their mere involvement in the domestic politics will produce on the domestic policy makers. If properly accounted for, the systemic influence can even turn out to be the most efficient manner of promoting democratization: creating the environment in which the domestic actors are embracing the democratic institutions as the best way for pursuing their own interests would thus ensure not only the rule adoption, but full compliance as well. Our research showed that, in absence of the change agents, the rule adoption achieved without changing the actor's preferences and strategies is not capable to ensure the rule implementation unless further incentives are offered. Democracy is far from the adoption of

the democratic rules and the promotion of the norms; if not backed by creating a domestic environment that makes the democratic procedures the only way for the peaceful settling of the political conflict, such efforts are doomed to create, at best, façade democracies which, as underlined by Morlino and Magen (2008), suffer from lack of domestic legitimacy. In these terms, the systemic impact that the involvement of a strong IA can produce, if combined with the properly chosen content, can be one of the successful ways for the democracy promotion. But if such systemic influence is not properly accounted for, the impact it produces on the domestic elite's strategies and preferences can become particularly negative, bringing to an outcome which might even threaten the very interests that induced the IA to invest his time and resources to influence the domestic policy. As we saw, in both Serbia and Macedonia the issues that rose the EU's security concerns (presence of the anti-EU nationalists in Serbia and inter-ethnic conflict in Macedonia) persisted as the main characteristics of the two countries, and were even nourished by the EU activities.

This brings us to the lesson concerning the IA's interests. The EU's activity in Serbia and Macedonia was mainly security-guided, and the rather low score in democratizing the two countries was a consequence of the EU's system of preferences that, in the name of security, decided to tolerate lower democratic standards. As an international actor, the EU is by no means obliged to intervene only on fully altruistic basis and, we might argue, its primary goal actually should be of protecting the vital interests of the EU citizens in all spheres of policy, foreign policy and approach to the third-states included. The problem, yet, rises from finding that the EU's primary interest – security – was not better pursued either. While the short-term EU goals (implementing the OFA and maintaining the Serbian nationalists away from power) were achieved, our analyses revealed that in both countries the mechanisms nourishing the EU's security concerns were created (the anti-EU forces are strengthening in Serbia, the politicization of ethnicity is persisting in Macedonia), making further EU intervention necessary. Which brings us to the old question: is the spreading of democracy the best guarantee of security and peace? Both Serbia in the '90s and the short inter-ethnic conflict that rose in Macedonia in 2001 confirmed Snyder's thesis according to which while democracies are less prone to war, the states in the process of democratization are particularly prone to conflicts fuelled by nationalism[697]. The mechanisms that, according to Snyder, turn the states in transition towards nationalism are to be found in the deficient and weak democratic institution and in the partial democratic reforms, and we showed how, in both Serbia and

[697] See Snyder, 2000, pp. 15-42.

Macedonia, the main mechanisms that further nourish the EU's security threats are the same that continue hampering the domestic democratization. Snyder's prescription is thus rather clear: where the transition still has to begin, particular attention should be concentrated on creating the pre-conditions for the democratization process, even when this implies the maintaining, for a limited period of time, of the authoritarian regime. But where the transition has already started and partial reforms and inadequate sequence of these reforms brought to the rise of the nationalism, the only remedy is to push forward the full democratization and to strengthen the democratic institutions[698]. Both our cases offered a support to Snyder's argument. Sacrificing democracy too hastily for the sake of overestimated (and even unrealistic, due to the inequalities in the relations between EU and these countries) security threat practically means consolidating and institutionalizing those mechanisms and practices that brought to the security concerns in the first place.

As Morlino and Magen (2008) underlined, developing democracy is a long process and ambitious goal, requiring time and a large amount of external stimuli. Turning Snyder's "ethnic democracies" into democracies is an even more ambitious project that, first of all, requires that the international actor is fully conscious about the direct and indirect impacts of its action, with a well-defined and adequately developed agenda and with full understanding of the fact that the only way to promote democracy is not to fight its opponents, but to create the environment in which the veto players will turn into change agents and democracy promoters. Hasty solutions cause more problems than they solve.

To conclude this work by reviewing the statement with which we started our analysis: as Kant stressed, some causes of democratization, and – we shall add – some causes of peace as well, lie beyond the country's borders. But some mechanisms hampering both should be searched at the same place as well.

[698]See Snyder, 2000.

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